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Before the Council of the District of Columbia, Committee on the Judiciary

Public Hearing on: B15-537, the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003; B15-460, the Juvenile Justice and Parental Accountability Amendment Act of 2003; B15-573, the Juvenile Justice Task Force Establishment Act of 2003; B15-574, the Juvenile Justice Act of 2003; and B15-523, the Restricting Minors Access to Graffiti Materials Act of 2003.

January 16, 2004

Good afternoon. My name is Robert J. Spagnoletti and I am the Corporation Counsel for the District of Columbia. On behalf of the Williams administration, I want to thank Chairperson Patterson and Members of the Committee for the opportunity to testify on this very important legislation. As you know, the Office of the Corporation Counsel is responsible for the prosecution of juvenile delinquency matters in the District of Columbia. With me today is Yvonne Gilchrist, the Director of the Department of Human Services which is the agency charged with the task of overseeing the rehabilitation of our juvenile offenders.

My comments today will focus on the legislation that was introduced on behalf of Mayor Williams: B15-537, the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003. Though I will offer the Committee some thoughts regarding the legislation that has been introduced by various Councilmembers, my primary focus will be the Omnibus Bill.

Let me begin by emphasizing that the Mayor's approach to juvenile justice reform does not end with this legislation. Indeed, the Mayor's Bill is one piece of a comprehensive approach that is already underway. As the Mayor has stated, our approach to juvenile justice reform involves proposing new laws that will protect our community and hold offenders accountable, and implementing programmatic changes that will enable us to better serve and rehabilitate the youth in the juvenile justice system.

As to the former, B15-537 is a starting point. This legislation lays the foundation for critical changes: to ensure greater accountability on the part of youth, parents, and caretakers; to better meet the needs of crime victims and assure their safety; to protect members of our community; and to improve services to the youth who enter the juvenile justice system.

As to the latter -- a major effort outside of the legislative arena is presently underway. On November 6, 2003, just one week after transmitting B15-537 to the Council, Mayor Williams established the Juvenile Justice Reform Task Force. Under the leadership of Yvonne Gilcrest, Director of the Department of Human Services, the Task Force is working to implement programmatic changes in the delivery of services to, and rehabilitation of, youth in our juvenile justice system.

This two-step approach to juvenile justice reform is essential. Through legal changes outlined in B15-537, we can enhance public safety and better serve victims:

- By ensuring that incompetent juveniles are appropriately treated;
- By easing the impediments to transferring the most violent offenders, who cannot be rehabilitated, to the criminal justice system;
- By providing law enforcement with additional tools such as investigative subpoena authority and the ability to enforce stay-away orders;
- By lifting the veil of secrecy in juvenile proceedings and allowing victims and witnesses access to information after suffering at the hands of a juvenile offender;
- By providing an avenue for victims to seek restitution for their injuries;
- By ensuring that juvenile cases are not prematurely dismissed when offenders are in need of rehabilitation;
- By treating victims and witnesses to crimes with dignity and respect; and
- By holding delinquent youth and their caretakers accountable.

At the same time, enactment of B15-537 will pave the way for improvements in the delivery of services to, and rehabilitation of, youth in the system:

- By placing the most violent offenders (those who cannot be effectively treated through the juvenile system) into the criminal system, so that critical juvenile justice resources may be devoted to those who can best be served (youth who are amenable to rehabilitation);
- By treating incompetent juveniles, rather than ignoring their deficiencies, in order to prevent youth from re-offending as juveniles and then matriculating into the adult system;
- By requiring that parents and caretakers participate in the rehabilitative process and holding them accountable for the supervision of their children;
- By engaging youth and families in the restorative justice process and holding them accountable to their victims and our community;
- By teaching youth that they are accountable for their non-compliance with court orders, including their failure to appear at hearings;
- By ending the days of unjustified dismissals to ensure that youth in need of services will receive them and to ensure that youth learn the importance of accountability; and
- By ensuring that youth in the juvenile system are expeditiously assessed and that their treatment is routinely evaluated.

The Mayor's legislation is a critical step toward strengthening our juvenile justice system. It is not the only step, nor is it the final one. The Bill will enable us to move forward toward meaningful reform. Moreover, the Bill is designed to strike the appropriate balance between the rights and safety of victims and communities and the rehabilitation of young offenders.

Each day, my Office, the various law enforcement agencies in the District and a host of other agencies interact with victims, citizens and community organizations who demand action

by public officials to ensure that their neighborhoods are safer. Our community looks to us to ensure that parents and juvenile offenders are held accountable, that crime victims receive better treatment, and that those empowered to make decisions about juvenile offenders, such as their placement and their treatment, are open to public scrutiny. The challenge in crafting legislation to address these concerns is to find the proper balance between competing concerns: the safety of the public and the rehabilitation of young offenders. The Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003 strikes this balance by enhancing public safety, while maintaining the fundamental goal of rehabilitating those youth who can be rehabilitated.

It would have been easy, and perhaps politically expedient for Mayor Williams to offer a far tougher bill—knowing that this Council would, in the end, strike a compromise between safety and rehabilitation. Instead, the Mayor challenged those of us in his administration to come together, discuss the competing issues, and seek to strike the proper balance. B15-537 is the result of that debate: it recognizes the concerns expressed by so many members of our community about safety and accountability, but also preserves the fundamental goal of our juvenile system: rehabilitation.

Now, I would like to discuss each Title of the bill.

Title I – Purpose Clause Act of 2003

The Purpose Clause Act of 2003 derives from the Mayor's Blue Ribbon Commission, which recommended that a purpose clause be created for Title 16 of the D.C. Official Code. As you are aware, Sections 16-2301 through 16-2339 establish the Family Court's jurisdiction over delinquency cases and provide the procedural framework for diverting, charging, litigating, and providing care and rehabilitation for youth who have committed delinquent acts.

The proposed Purpose Clause establishes the tone for the District of Columbia's juvenile justice system. It carefully balances the rights of victims and interests of public safety with the fundamental goal of rehabilitating the youth in our juvenile justice system. The preamble states that, "The purpose of this chapter is to create a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will treat children as children in all phases of their involvement, while protecting the needs of communities and victims alike."

To accomplish these ends the Purpose Clause establishes goals for the juvenile justice system. See Title I Exhibit A. These goals promote due process and fair hearings. They also recognize the need for early intervention, diversion, and community and neighborhood based treatment for youth. They place a premium on the rehabilitation of children with the goal of creating productive citizens of the City's youth. The goals recognize that rehabilitation of children is inextricably connected to the well-being and strength of their families and supports family accountability and participation in treatment and counseling. They also seek to hold children found to be delinquent accountable for their actions and recognize that public safety is a legitimate concern of the juvenile justice system.

Title II – Juvenile Competency Act of 2003

In 1990, the District of Columbia Court of Appeals found the existing juvenile competency statute unconstitutional. That statute, which was premised on adjudicating youth so that rehabilitative services would be provided, failed constitutional muster because it permitted the adjudication of a youth despite his or her incompetence to stand trial. *See In Re W.A.F.*, 573 A.2d 1264 (D.C. 1990). In assuring that the appropriate constitutional standard was applied before a youth could be adjudicated, the effect of that case was to leave the District without a statutory mechanism to treat incompetent youth through the juvenile justice system and without a legal framework under which to help youth attain competency.

Today, over a decade after the competency statute was invalidated, hundreds of incompetent offenders have gone untreated, and their crimes simply ignored. This is true of some of the most violent young offenders, many of whom repeatedly committed violent offenses while juveniles, but were afforded no services in the system because of the statutory void.

Over the years, attorneys in the Office of the Corporation Counsel have argued repeatedly for the court to adopt the adult competency statute, D.C. Official Code § 24-501 (2001), in the absence of a valid juvenile statute. These efforts have yielded limited success. Though some judges have been willing to permit short continuances, particularly in cases where youth were housed in the community, most judges have viewed the absence of a juvenile competency statute to mean that they lack the authority to order restoration services regardless of a youth's placement. Thus, most incompetent youth have gone untreated. Given these legal hurdles, frequently charges were not even brought against youth who were arrested, found incompetent and then rearrested for nonviolent offenses. In cases involving some of the most heinous crimes, the lack of a legal mechanism for treating competency has been particularly disturbing and dangerous. Incompetent youth charged with armed robbery, first-degree sexual abuse, assault with a dangerous weapon, and other violent crimes have simply been returned to the community, without any treatment services, and their delinquency cases dismissed.

Neither the public nor the offenders are served by the absence of a valid juvenile competency statute. Indeed, many of these youth commit multiple offenses, all the while receiving no services from the juvenile justice system because of their incompetence. Rather than helping these youth attain competence, they are instead returned to the community with no services in place. Not surprisingly, they often re-offend.

In a number of instances, the same youth has been arrested three, four, or even five times in less than a one-year period. Each time, that youth is charged, but his or her case is dismissed after he or she is found incompetent to stand trial. Sadly, but not surprisingly, a youth who comes into the juvenile justice system and is found incompetent to stand trial may later find him or herself addressing competency in the adult criminal justice system. To this end, we are greatly failing our youth by denying them the benefit of being restored and rehabilitated in the juvenile system. If we continue to ignore this cycle, it will never break. On the other hand, if we address this problem and resolve the underlying competency issues, we may break the cycle by allowing youth to receive the benefit of rehabilitative services while they are still eligible to be treated as juveniles.

The Juvenile Competency Act of 2003 seeks to redress this gap. The statute formally repeals the present unconstitutional provision and codifies the well-established constitutional standard for competency established in *Dusky v. United States*, 362 U.S. 402 (1960) that was adopted by the District of Columbia Court of Appeals in *In Re W.A.F.*, 573 A.2d 1264 (D.C. 1990). The Act further provides detailed procedures for seeking evaluations of a juvenile's competency to stand trial, adjudicating the issue of competency, treating youth to attain competency, re-evaluating and adjudicating the issue of competency restoration, and discharging youth from treatment when competency cannot be attained. To that end, the Act:

- Ensures that a competency evaluation will be completed by at least one psychiatrist, clinical psychologist or master's level psychologist who is qualified, based upon his or her training and experience, to perform forensic evaluations of juveniles;
- Provides that competency evaluations be performed on an out-patient basis unless the youth has been detained by a judge under D.C. Official Code § 16-2310 (2001), a psychiatrist determines that in-patient hospitalization for purposes of the examination is necessary, or the court finds that hospitalization is necessary for a sufficient evaluation;
- Mandates that in-patient competency evaluations be completed within thirty days and permits only one thirty day extension of this period if the mental health professional conducting the examination deems that the additional period of in-patient examination is necessary to perform an adequate evaluation;
- Establishes a mechanism for obtaining a second evaluation if the finding of the first competency evaluation is contested by either party;
- Creates a constitutionally valid standard of proof by which the court may adjudicate a contested question of competency;
- Requires treatment and training services to help incompetent youth attain competency;
- Provides that treatment and training services be provided to incompetent youth on an out-patient basis unless the youth has been detained by a judge under D.C. Official Code § 16-2310 (2001) or the court finds that hospitalization is necessary for treatment and training services;
- Requires that reports, at a maximum of six-month intervals, are provided on a youth's progress toward attaining competency;
- Like the adult statute, deems the treating mental health provider's finding of competency as sufficient to enter a finding that a youth has attained competency, unless challenged;
- Provides a mechanism for adjudicating contested issues regarding whether a youth has attained competency;

- Requires that the mental health professional treating an incompetent juvenile provide a discharge plan any time that he or she believes that the youth will not become competent, but in no instance later than 90 days prior to the youth's twenty-first birthday;
- Creates a mechanism for either party to seek a hearing if challenging the issue of whether the youth will attain competency;
- Establishes a legal standard by which the court may adjudicate the issue of whether a youth will attain competency prior to his or her twenty-first birthday; and
- Ensures that youth deemed unrestorable be discharged and that delinquency charges be dismissed no later than the youth's twenty-first birthday.

Modeled after the Virginia and Florida juvenile competency statutes, the Juvenile Competency Act of 2003, adopts the best practices employed by most of the states that apply the Federal Constitutional competency standard to juveniles. See Title II: Exhibits A and B. Further, the legislation is intended to favor competency restoration treatment to be provided in the least restrictive setting possible, while allowing for exceptions when community safety or clinical circumstances warrant treatment in a more secure environment.

We recognize, of course, that this legislation will require a commitment of resources to examine and treat our incompetent youth. Some of this cost can be addressed by creating a screening mechanism, similar to that used in the adult system, where adults suspected of being incompetent are screened the same day by a qualified professional. This assures that scarce resources will be used on those juveniles who truly need a full examination and/or restorative treatment. We also think that it is essential that only those juvenile offenders who have a mental condition that allows for restoration be placed in this system. The sooner that determination can be made, the sooner a more effective treatment plan can be put into place. Some modifications may need to be made to the bill to make this point clearer.

Title III – Confidentiality of Juvenile Records Act of 2003

Outside of the District and a small number of other jurisdictions, the traditional notions of secrecy surrounding juvenile proceedings fell out of favor more than a decade ago. By the early to mid-1990s, most jurisdictions had done away with antiquated confidentiality laws such as our present statute.

In 1995, the National Council of Juvenile and Family Court Judges (NCJFCJ) passed a resolution declaring that:

Traditional notions of secrecy and confidentiality should be re-examined and relaxed to promote public confidence in the court's work. The public has a right to know how courts deal with children and families. The court should be open to the media,

interested professionals and students and, when appropriate, the public in order to hold itself accountable, educate others, and encourage greater community participation.

National Council of Juvenile and Family Court Judges. *Children and Family First: A Mandate for America's Courts*. Reno, Nevada: NCJFCJ. 1995. Page 3.

Today, by statute or State Constitution:

- At least 24 states either open juvenile hearings to the public completely, or at a minimum, in certain cases;
- At least 32 states open all or certain juvenile hearings to victims;
- At least 46 states allow certain juvenile records to be released to the public; and
- Every jurisdiction, except the District of Columbia, permits certain victims to access some or all juvenile records.

See Title III: Exhibit A (for a comparison of state juvenile confidentiality laws).

By way of example, I will use the State of Missouri. I draw upon the Missouri model because the Mayor's Blue Ribbon Commission [and some from whom you heard on Wednesday] tout Missouri as an example of best practices in its treatment of juvenile cases. To the extent that others have relied upon the Missouri model, it is important that the complete picture be given regarding how Missouri handles all aspects of juvenile justice—including confidentiality. Indeed, while it's easy to draw upon any jurisdiction to extrapolate its practices that best suit a philosophy in a limited area, looking at the bigger picture often reveals a more complete understanding of why one practice may be feasible.

First, Missouri's confidentiality model is premised on Section 32 of Article 1 of its State Constitution, which recognizes the rights of victims as paramount to the rights of defendants and juvenile delinquents. *See* Mo. Const. Art. 1, § 32 (2003) and R.S.Mo. § 595.209 (2003). Under Missouri law, a juvenile officer may, at any time--without a court order-- discuss the juvenile, the case, and the charges with the victim, witnesses, school officials, law enforcement officers, and prosecutors. R.S.Mo. § 211.321.2(1)(a) (2003). Additionally, a juvenile officer may, at any time--without a court order--give information to the public "which does not specifically identify the child or the child's family." R.S.Mo. § 211.321.2(1)(b) (2003).

Missouri law states that it "shall not be construed to prevent the release of **general information** regarding the informal adjustment or formal adjudication of the disposition of a child's case to a victim or a member of the immediate family of a victim of **any offense** committed by the child."¹ R.S.Mo. § 211.321.6 (2003) (emphasis added). Moreover, in Missouri, if a juvenile is found guilty of an offense that would be a felony if committed by an adult, the records of the dispositional hearing and related proceedings become "open to the

¹ "Such general information shall not be specific as to location and duration of treatment or detention or as to any terms of supervision." R.S.Mo. § 211.321.6 (2003). However, under other circumstances, including to victims of dangerous felonies, those specifics may be disclosed. R.S.Mo. § 595.209 (2003).

public to the same extent that records of criminal proceedings are open to the public.”² R.S.Mo. § 211.321.2(2) (2003).

The law goes even further in regard to victims of dangerous felonies³ (or attempts to commit dangerous felonies). Those victims are automatically entitled to the following rights:

- ✓ to be present at all juvenile proceedings, even if that person is or may be called to testify as a witness in the case;
- ✓ to information about the crime;
- ✓ to be informed about pleas, status, and sentencing hearings;
- ✓ to be informed of the status of the case, the release of the juvenile for any reason (within 24 hours), the escape of the juvenile and his or her recapture;
- ✓ to be informed of any probation revocation hearing and to be heard, or submit a statement, at the hearing;
- ✓ to be informed of the juvenile’s projected release date; and
- ✓ to be informed of any type of release of the juvenile in advance of permanent release.

R.S.Mo. § 595.209 (2003).

While understanding the Missouri model is important in the context of having a complete picture of why that State may utilize other practices in its juvenile justice system, Missouri is by no means the most progressive jurisdiction in terms of its confidentiality laws. Indeed, every jurisdiction, other than the District of Columbia, grants crime victims the right to access certain juvenile records or attend certain hearings. See Title III: Exhibit A.

The Juvenile Confidentiality Act of 2003 would bring the District’s confidentiality laws far closer to the models used by most other jurisdictions today. Though the bill would not open up juvenile proceedings to the public, as many states have done, the proposed changes would resolve a number of problems that arise as a result of the current antiquated laws. Though movement toward open juvenile proceedings may be the ultimate direction the Council considers, in B15-537 the Mayor has identified the following critical areas where traditional notions of secrecy must give way to openness:

1. Victims and Witnesses

Individuals whose lives have been directly touched by a criminal offense should not be denied access to critical information simply because the offender was a juvenile. Indeed,

² Except that social summaries, reports by treating agencies, and similar reports remain confidential, unless release is permitted by court order.

³ Dangerous felonies are “arson in the first degree, assault in the first degree, attempted forcible rape if physical injury results, attempted forcible sodomy if physical injury results, forcible rape, forcible sodomy, kidnapping, murder in the second degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, and abuse of a child” R.S.Mo. § 556.061(8)(2003).

a rape victim who is victimized by a 17 year old should have no less right to know the offender's placement than the victim who was raped by an 18 year old.

Under existing law, victims and witnesses can be compelled to testify at trial, but are told nothing about what takes place. Victims and witnesses who fear for their safety can be told nothing about the offender's placement before or after trial. Moreover, victims and witnesses are not entitled to the peace of mind of knowing whether a judge who has released an offender has ordered him or her to stay away from the victim, the witness, or a location.

Day after day, prosecutors in my Office must try to explain this to members of this community. They must recommend that people carry a cellular phone and be prepared to call 911 if they feel threatened. At the same time, they cannot advise the sleepless victim—who was raped and beaten—that the 15 year old who raped her not only lives in her building, but that he was ordered released and will be back there tonight. Victims are perplexed and then frustrated when our attorneys tell them that they cannot share basic information with them. This frustration frequently leads to disenchantment with the system and refusal to cooperate with the investigation and prosecution.

Section 302(a)(1) of the Juvenile Confidentiality Act grants the Corporation Counsel the discretion to release certain limited information related to court records to victims and witnesses, or family members if the victim or witness is a child, was killed, or is incapacitated. By granting this discretion to the Corporation Counsel, he can endeavor to ensure that the purpose for which the information is sought is one that warrants disclosure. Additionally, Section 302(c)(6) of the Act permits the release of law enforcement records concerning a juvenile to the victims and witnesses, or family members if the victim or witness is a child, was killed, or is incapacitated, so long as the those records relate to the offense to which they were a victim or witness.

It is important to note two mechanisms that limit the scope of information contained in court records that may be released and protect the further release of information by the victim, witness, or family member. First, the Corporation Counsel may not release information under this provision that is otherwise confidential by law. To that end, protected information, such as mental health information that might be found in a court record, would not be released. Second, Section 16-2336 of the D.C. Code, which criminalizes the release of information, prohibits any further disclosure of information obtained by the victim, witness or family member. Accordingly, the subsequent improper disclosure of the information by the victim, witness, or family member would subject him or her to possible criminal prosecution by my staff.

2. Law Enforcement

Central to juvenile justice reform is the importance of ensuring that law enforcement officers can protect our neighborhoods. As long as we continue to favor the placement of youth back in the community, we must be able to assure the public that law enforcement is equipped with the most basic tool: information.

Under existing law, police officers, like victims, are precluded from knowing whether a youth has been released, and if so, whether a judge has issued a stay away order. This absurdity makes enforcement of such orders impossible and renders those orders meaningless. Juveniles quickly learn this. Indeed, within hours of arresting a youth for selling drugs in a known open drug market, officers routinely see those same youth right back in the same spot and are left wondering why they bother to enforce the law in the first place. If a stay away was ordered, police operate in the dark, unaware of its existence and unable to enforce it. This encourages youth to ignore the order, aware that non-compliance has no likely consequence. In addition to teaching youth the wrong lesson, this places victims and the community at risk.

Similarly, existing law prohibits law enforcement officers from having other critical information that is necessary to their duties. For example, police may not be informed if a youth is court ordered to a shelter or where in the community he or she resides. If that youth is sought as part of a criminal investigation, whether as a witness or pursuant to a custody order, prosecutors or probation officers may not advise the police as to the juvenile's whereabouts.

Sections 302(a)(7) and (b)(4) of the Juvenile Confidentiality Act resolve these absurdities by permitting the release of certain court and social file information to law enforcement officers when necessary for their official duties. Limiting the information to that which is necessary for their official duties, prevents the release of information that police need not know, thereby continuing to protect juvenile offenders from the release of gratuitous information. Moreover, police would be precluded from impermissibly disclosing this information and, like others, would be subject to criminal prosecution under Section 16-2336 of the D.C. Code.

3. The United States Attorney and other Prosecutors

Existing law only permits the sharing of juvenile court records with the United States Attorney for the District of Columbia and prosecutors from other jurisdictions when such records relate to the same offense that he or she is prosecuting or when such records will be considered for determining bail or conditions of release in an adult criminal case in which the offender is now charged. D.C. Official Code § 16-2331(b)(6) (2001). Additionally, there is no express provision in the law that permits the United States Attorney or other prosecutors to access law enforcement records related to a juvenile, even when the prosecutor is handling a companion adult case.⁴

These limitations yield truly absurd results. For example, when the United States Attorney or a prosecutor from another jurisdiction is faced with critical decisions--

⁴ Arguably, D.C. Official Code § 16-2333(b)(4) (2001), which permits the release of these records to "law enforcement officers of the United States . . . when necessary for the discharge of their current official duties" may be interpreted to apply to an Assistant United States Attorney because he or she is considered a law enforcement officer of the United States" under Federal law.

including whether to exercise the discretion to charge an offender as an adult, or whether to file a transfer motion in another jurisdiction--he or she is not entitled to access the offender's juvenile record. Similarly, when our own United States Attorney has convened a grand jury to investigate an adult, the juvenile co-conspirator's records are not available to the grand jury. Additionally, during an adult sentencing hearing, the judge, court staff, probation officers, and defense counsel are all entitled to know the defendant's juvenile record—however, the prosecutor remains in the dark. These are not abstract examples—they occur regularly. Indeed, in the past year prosecutors from the District of Columbia, Maryland, Pennsylvania, New York, California, Minnesota, Virginia, Florida and a number of other jurisdictions have been faced with dilemmas such as these. In the end, they are often left in the dark when making critical decisions about whether or how to charge one of our youth who has committed a crime in their jurisdiction.

Sections 302(a)(6) and (c)(1) of the Juvenile Confidentiality Act resolve these issues by allowing the United States Attorney and other prosecutors to access juvenile court and law enforcement records when necessary for their official duties. As noted above, this information would similarly be protected from subsequent prohibited disclosure.

4. The Mayor's Family Court Liaison and Participating Agencies

In 2002, Congress enacted the Family Court Act of 2001. That law resulted in the creation of a Family Court Liaison Office, which is charged with, among other things, coordinating the agencies that deliver services to families under the jurisdiction of the Family Court. The Family Court Act itself requires the coordination of services between District agencies that service families and the sharing of information for the purpose of coordinating and facilitating the provision of treatment and services.

The current confidentiality statutes limit the ability of these agencies, as well as the Family Court Liaison, to share information about juvenile family members. This impedes their ability to effectively coordinate services.

Section 302(a)(4), (b)(2) and (c)(4) of the Juvenile Confidentiality Act resolves the conflict in local laws by amending all three juvenile confidentiality statutes to specifically allow the sharing of information between District agencies that service families and the Mayor's Family Court Liaison, who is required by law to coordinate these efforts. This legislation resolves that conflict by permitting the sharing of information that is necessary for the involved agencies to carry out their official duties. As noted above, this information would similarly be protected from subsequent prohibited disclosure.

5. The Children's Advocacy Center and the Multidisciplinary Investigation Team

Also in 2002, the Council enacted the Improved Child Abuse Investigations Act of 2002 which requires that cases of sexual and physical abuse of children be investigated by a multidisciplinary investigation team (MDT) and coordinated through the Children's Advocacy Center, a private facility where child victims can be forensically interviewed

and assessed by trained experts to minimize trauma. Since its inception, the MDT and the CAC have provided a safe haven in which to streamline and improve the quality of investigations involving crimes against children.

Members of the MDT, the Office of the Corporation Counsel, the Office of the United States Attorney, the Metropolitan Police Department, the Child and Family Services Agency and the Child and Adolescent Protection Center at Children's Hospital come together each day to ensure that our most vulnerable victims receive the best possible physical and emotional care, to ensure that their cases are effectively and thoroughly investigated, and to bring those who perpetrate against children to justice. Each year, the MDT conducts approximately 600 joint investigations of sexual and physical abuse. Moreover, each year approximately 200 of these cases involve an allegation of a juvenile or suspected juvenile sexually abusing a child.

The current confidentiality statutes impede the ability of the participating MDT members, and the CAC staff, to share critical information as part of their joint investigation. Current laws do not permit the sharing of juvenile information with all members of the investigative team. Section 302(a)(5), (b)(3) and (c)(11) of the Juvenile Confidentiality Act resolves this impediment by amending all three juvenile confidentiality statutes to allow the sharing of information between MDT members and the CAC when it is necessary to carry out their official duties. As noted above, this information would similarly be protected from subsequent prohibited disclosure.

Title IV - Violent Juvenile Offenders Transfer Act of 2003

Title IV of the bill—the Violent Juvenile Offenders Transfer Act of 2003, addresses a small but important population: the most violent offenders who cannot be effectively treated in our juvenile system.⁵

More than a decade ago, most jurisdictions revised their transfer laws in response to a rise in violent juvenile crime. In 1992, the District of Columbia Council enacted a law, which added a so-called “presumptive waiver” provision to our existing statute. In so doing, the Council sought to “get tough” on a small class of the most violent offenders: those charged with murder, first degree sexual abuse, robbery while armed, carjacking while armed, or assault with intent to commit any of these offenses. The 1992 law created a statutory presumption, for purposes of a hearing on a transfer motion, that these offenders should be transferred “in the interest of public welfare and the protection of public security.” D.C. Official Code § 16-2307(e-2) (2001).

⁵ See Heike P. Gramckow, Ph.D. and Elena Thompkins, J.D., “*Enabling Prosecutors to Address Drug, Gang, and Youth Violence*”, published by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, December 1999. (“If offenders have demonstrated that they are not amenable to treatment in the juvenile justice system or if the nature of the crime warrants, transfer to criminal court is necessary. Transfer of these offenders may protect juveniles who remain in the system and free up scarce resources to focus on those offenders who will benefit most from the system’s rehabilitative programs.”)

In 1996, the District of Columbia Court of Appeals rendered that presumption meaningless. In *In Re J.L.M.*, 673 A.2d 174 (1996), the Court held that the 1992 “presumption” amendment did not shift the burden of proof to the offender. In effect, today the 1992 amendment has no substantial legal significance. Interestingly, as of 1997, 15 states (including the District) designated a category of cases in which waiver to criminal court is rebuttably presumed during a hearing on a transfer motion. In all of these jurisdictions, except in the District of Columbia, the juvenile rather than the government, bears the burden of proof in the waiver hearing; thus, if the juvenile fails to make an adequate argument against transfer, the juvenile court must send the case to criminal court.⁶ Only in the District of Columbia, has the “presumptive waiver” provision been interpreted to fix the burden of proof upon the government.

Regardless of whether *In Re J.L.M.* misinterpreted what the Council intended in 1992, the statute must be fixed. In the most heinous cases, those involving a juvenile who is age 15 or older and is charged with a limited number of the most violent offenses, public safety demands that some compelling reason must exist in order to treat that offender as a juvenile.

The Violent Juvenile Offenders Transfer Act strikes the balance in favor of protecting our community, by placing a limited number of the most violent offenders—those who cannot be effectively treated through the juvenile system—into the criminal justice system. This will allow for the more effective use of limited and critical resources to be devoted to those who can best be served, those who are amenable to rehabilitation. At the same time, the Act maintains the juvenile’s existing statutory right to a hearing and would allow, in cases where the evidence warrants, the juvenile court to deny a motion for transfer. Indeed, this bill does not, as many other jurisdictions have done, lower the age of direct file to 15.⁷ As you know, direct file is the mechanism by which a prosecutor’s office has the discretion to charge someone under the age of 18 as an adult without a judicial hearing.

The Violent Juvenile Offenders Transfer Act does not open the door to widespread prosecution of juveniles as adults. The Act addresses only the most heinous offenders, i.e., those who commit the most violent crimes and who present a danger to our community and cannot be rehabilitated. Indeed, the Violent Juvenile Offenders Transfer Act simply shifts the burden of proof to the juvenile and only does so in cases involving the most violent crimes. The Act does not expand the category of those who would be eligible for transfer, nor does it lower the age, even though the vast majority of states have a lower age for transfer eligibility than the District of Columbia. As of 1997, 17 states specified no minimum age for judicial transfer of certain offenses, 2 states established a minimum age of 10, 3 states established a minimum age of 12, 6 states established a minimum age of 13, 16 states established a minimum age of 14, and the District of Columbia had, and still has, a minimum age of 15 for limited offenses. See Title IV: Exhibit A.

⁶ In 10 of those states, a presumptive waiver places the burden of proof, by a preponderance of the evidence, upon the juvenile that he should not be waived to adult court. In four of those states, a juvenile has the burden of proof by clear and convincing evidence that a waiver is not justified. See Title IV: Exhibit A.

⁷ As of 1997, of the 15 states with direct file provisions, only the District of Columbia’s began at age 16. The other 14 jurisdictions allowed the direct file of youth below 15 years of age. See Title IV: Exhibit A for more details.

Enactment of the Violent Juvenile Offenders Transfer Act would not result in the wholesale transfer of youth to the adult system. Those who compare its reach to states like Florida and others, where routine drug offense and property crimes are transferred, do not understand the bill. Those who cite to research from other jurisdictions that purports to illustrate that transferring offenders elsewhere has not been effective, fail to point out that the states studied routinely transfer non-violent offenders for property crimes and drug offenses. In comparing how those offenders have fared in the adult system, as compared to similar offenders in the juvenile system, those studies have relied upon a cross-section of offenders, not just the most violent offenders that B15-537 addresses.

The studies which Dr. Butts references in his recent article give little insight into what is proposed here today. Those studies compare apples to oranges. Yes, the data from the jurisdictions studied suggests that juvenile offenders who are transferred to adult court, on the whole, receive shorter sentences than their adult counterparts. And, because those offenders receive little to no rehabilitative services in the adult system, it is not surprising to see that they are more likely to re-offend. However, as noted earlier, the jurisdictions studied all transfer a substantial number of non-violent offenders.⁸ Accordingly, it is no surprise that these youth would receive comparatively shorter sentences than older adults. However, data regarding sentences of violent offenders who are transferred, in contrast, shows that violent offenders receive significantly greater sentences in adult court after waiver from juvenile court, thus meeting the goal of protecting the public.⁹ Indeed, though we have transferred so few cases in the District, our own comparisons suggest similar results. The most recent case, an offender who was ordered transferred in 1998, was sentenced to 5-15 years for possession of a firearm during a crime of violence, a consecutive 20 years to life for murder II while armed; and a concurrent 7 to 21 years for manslaughter (in a second case), for an aggregate 25 to life plus 15 years.

The Violent Juvenile Offenders Transfer Act would affect a small number of the most violent offenders – those who present the greatest danger to our community. The bill does not, like approximately 28 jurisdictions, automatically define the most violent offenders as adults through a statutory exclusion provision; nor does it mandate waiver of offenders, like approximately 14 jurisdictions. This bill merely strikes the balance in favor of public safety for a small category of the most violent offenders age 15 and older.¹⁰

⁸ For example, according to the United States Department Of Justice, in 1992 alone, 65% of the juveniles transferred to adult courts in the Nation were transferred on property offenses, drug offenses and offenses against public order. The Violent Juvenile Offender Transfer Act does not target these crimes. Juveniles in the District of Columbia who are charged with those offenses would not be affected by the proposed bill.

⁹ Podkopacz, M.R. and B. Feld. "The End of the Line: An Empirical Study of Judicial Waiver." The Journal of Criminal Law and Criminology, 86(2) (Winter, 1996) 449-492.

¹⁰ Targeting offenders age 15 and above, appears to be the most fruitful. According the Bureau of Justice Statistics, offenders age 15-17 commit 70% of the violent crimes and 86% of the homicides committed by juveniles. Moreover, most developmental research suggests that as youth grow older—particularly above age 13—they may become less amenable to rehabilitation. In 1997, Dr. Butts wrote: "offenders **under age 15** have a high risk of continued criminal activity, yet are **more amenable** to services and sanctions." Jeffrey A. Butts and Howard N Snyder. The Youngest Delinquents: Offenders Under Age 15. U.S. Dept. of Justice, OJJDP. September 1997. (emphasis added).

The balance that must be struck to ensure public safety requires that we acknowledge that some people, even younger people, present a substantial danger to others. It will not matter to the mother of the next child¹¹ who is killed as he leaves school that we tried every imaginable means to rehabilitate an offender if that offender takes her child's life. Indeed, the only thing that will matter is that we allowed that 15 year-old to remain in her neighborhood, when it was clear that he presented a danger to the public and that he was not amenable to rehabilitation by his 21st birthday.

This bill does not give up on children. Instead, it helps to protect them. Children and teens are disproportionately victimized and are particularly vulnerable to violent victimization.¹² We must begin to protect those young persons.

As we move toward constructing a better juvenile justice system, we must acknowledge that we have precious few resources to invest. To that end, we must dedicate those resources wisely. If we expend hundreds of thousands dollars per year and endless man-hours on a dangerous and violent youth who has demonstrated neither his amenability nor his interest in rehabilitation, we distract critical resources from those who would be better served. In constructing a strong juvenile system, one that provides the very best for our youth, we must also be prepared to make difficult choices in order to protect our neighborhoods, our communities, our citizens, and our innocent children.

Again, I would call your attention to the State of Missouri, which was touted by the Blue Ribbon Commission for its model juvenile system. And, again, I ask that you consider the full picture. Missouri law permits for the transfer of any youth aged 12 or older for any felony. R.S. Mo. § 211.071 (2003) and R.S. Mo. S.Ct. Rule 118. Moreover, Missouri law requires that the court conduct a transfer hearing for any juvenile, regardless of age, who is charged with: murder, first degree assault, forcible rape, forcible sodomy, first degree burglary, or distribution of a controlled substance, or any youth who has a new charge, regardless of age or offense, and "has committed two or more prior unrelated" felonies. R.S. Mo. § 211.071 (2003).

Finally, I would like to mention the timeframes that are included in the Violent Juvenile Offenders Transfer Act. There are two changes: one in Section 403(a) and one in Section 403(f), to existing law. The intent in introducing Section 403(a) was to allow, only in those cases where the burden of proof has been placed on a juvenile, additional time for the offender to prepare and to cap the amount of time in which the trial court must render its decision. Accordingly, the bill moves the period from 10 days to 30 days in which the hearing must commence. In addition, Section 403(a) would allow for one—but only one—30 day extension. Though as introduced, the bill applies the 30-day rule to all cases, that was a drafting oversight. These cases already take far too long under the existing 10-day rule—extending the timeframes in cases where the government retains the burden of proof is clearly not necessary. We are

¹¹ According to the U.S. Department of Justice, Bureau of Justice Statistics, each year, ten percent of murder victims in the District of Columbia are under the age of eighteen.

¹² Nationally, "nearly 38,000 juveniles were murdered between 1980 and 1997. A juvenile offender was involved in 26% of these crimes when an offender was identified." Juvenile Offenders and Victims: 1999 National Report, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Programs.

happy to work with the Council to craft an appropriate amendment that would limit the changes proposed in Sections 403(a) and (f) to only those cases referenced in Section 403(e) of the bill.

Title V – Corporation Counsel Subpoena Authority Act of 2003

Title V of the bill, the Corporation Counsel Subpoena Authority Act of 2003, seeks a limited expansion of OCC's existing subpoena authority to include felony and domestic violence offenses prosecuted by the Juvenile Section and to include limited offenses prosecuted by the General Crimes Section.

The Office of the Corporation Counsel's Juvenile Section has jurisdiction to prosecute federal, local, regulatory, and status offenses for juveniles in the Superior Court. The Section regularly prosecutes youth charged with murder, sexual assault, burglary, and armed robbery in addition to our more prevalent prosecutions of youth charged with guns, drugs, assaults and operating stolen cars. The General Crimes Section prosecutes designated adult misdemeanor and criminal traffic cases, including parental kidnapping, leaving the scene of an accident where there has been personal injury or property damage, indecent exposure to an adult or minor, indecent proposal to an adult or minor, many of the "quality of life" offenses, as well as regulatory offenses, welfare fraud, and tax and licensing cases. The Office also prosecutes slum landlords.

In 2003 alone, the Juvenile Section no papered, or declined to file charges in, approximately 72 cases because witnesses were unwilling to voluntarily speak with us or otherwise failed to cooperate with our investigations and papering process. In countless other cases law enforcement officers did not even present cases to us because witnesses failed to cooperate with police investigations. In each one of these cases real harm was caused to a victim or to our community. Just as troublesome, the youth who committed the offenses were not brought into the juvenile system and, therefore, did not receive any care or rehabilitation, and were free to re-offend. A few examples of these cases are enlightening.

- In July of 2003 we had to decline a request for a pre-petition custody order (juvenile arrest warrant) for a youth who was accused of committing first-degree sex abuse because the victim's parents refused to bring him in to be interviewed. The victim's parents were related to the juvenile perpetrator and were unwilling to cooperate in any way with the prosecution.
- In that same month a teacher at a residential charter school was accused of exposing himself to a student. The police attempted to interview a possible witness to the incident. One of our attorneys received a message on her voice mail from the director of the facility. The person stated that they would not give the police permission to interview the witness. The attorney had no way to compel the witness to appear.
- In April 2003 we had to decline to prosecute a domestic assault case because of lack of subpoena power. The offender had just finished probation approximately two months prior to the incident. The police paperwork showed that he assaulted a family member. When he was arrested he said that he would assault again. The victim's mother, who was

an eyewitness herself, refused to bring the victim in for an interview.

- In May 2003 we attempted to interview a witness who left his key in his mother's car and saw a youth in the car when he went back to it. According to the police report, the witness and the youth got into a fight over the car. When the witness heard gunshots he ran away and the youth drove off. The car was stopped 16 hours later, approximately two to three blocks from the site of the offense. The youth was in the passenger seat and a gun was found under his seat. The witness refused to talk to us about the case. He would only state that it would be a waste of time to talk to us because he was not going to testify at trial. The attorney continued to try to talk him into telling us what happened and stressed the fact that shots were fired and people could have been killed. The witness repeated that he didn't care. He said he was not scared of these guys but just wasn't going to testify.¹³

These cases demonstrate the fault in a system that requires prosecutors to have sufficient evidence prior to bringing charges but no mechanism available to them to compel the production of that evidence. In each one of these cases the Office of the Corporation Counsel did not have sufficient evidence to prosecute the case. With pretrial subpoena power, we may have been more successful in gathering the required evidence. Numerous states have granted their prosecutors investigatory subpoena power. A number of these states permit the prosecutor to subpoena witnesses and take testimony under oath. See Title V: Exhibit A.

The proposed legislation expands the subpoena authority already granted to the Mayor, under D.C. Code §1-301.21, or the Corporation Counsel to investigate, and when appropriate, record statements made by witnesses. The Corporation Counsel currently has subpoena authority to investigate Medicaid provider fraud under D.C. Code § 4-804 and false claims cases under D.C. Code § 2-308.19. In fact, substantial portions of this bill were taken from D.C. Code § 28-4505 which gives the Corporation Counsel investigative authority to require witnesses to appear to give testimony in cases involving civil antitrust investigations.

This bill carefully balances the government's interest in ensuring the public safety by securing adjudications and convictions while providing protections to the subpoenaed witnesses. In fact, to address concerns raised on December 5, 2002, when this Committee heard testimony on a previous version of similar legislation, the legislation has been substantially rewritten.

The revised legislation includes the following changes:

- It limits OCC's authority, in juvenile cases, to issue subpoenas only to investigate a delinquent act that would constitute a felony offense if an adult had committed it or any intrafamilial or domestic violence offense, as defined in D.C. Code § 16-1001(5).

¹³ If my office had subpoena power at the time of this offense, we would have subpoenaed this witness and questioned him under oath. Had he refused to testify we would have sought judicial assistance. See lines 16-22 of page 25 of B15-537.

- It limits OCC's ability to issue subpoenas to investigate offenses committed by adults where the maximum possible penalty exceeds 30 days imprisonment. See Title V Exhibit B. We anticipate using this authority to assist in the prosecution of such offenses as parental kidnapping, indecent exposure, leaving after colliding (where there has been either personal injury or substantial property damage due to the car accident) and welfare fraud.
- It requires OCC to record the testimony, unless the attorney issuing the subpoena and the witness agree otherwise in writing.
- It grants the subpoenaed witness the right to note any typographical errors that the witness desires to correct on an errata sheet that will be attached to the transcript of the recorded testimony.
- It affords the witness the possibility of anonymity by limiting those who may be present during the taking of testimony to OCC attorneys and staff, other people involved in the investigation, the witness, his or her attorney, interpreters when needed, and the stenographer or operator of a recording device.
- It protects witnesses, by prohibiting persons who are present during the taking of testimony from disclosing any information about the testimony, except under delineated circumstances.¹⁴

Additionally, the proposed legislation retains the protections granted in the original bill that would permit the subpoenaed party to be accompanied by counsel during this process. It requires that the person serving the subpoena advise the witness of this right. It also retains the provisions that allowed a subpoenaed party to request that a judge quash or modify the subpoena if compliance would be unreasonable, oppressive, or violate any privilege the witness may be entitled to exercise in a court proceeding. It allows the witness or attorney to object to any question on constitutional grounds, or other legal privilege, and to state on the record the reason for refusing to answer the question.

Title VI – Juvenile Disposition Act of 2003

The Juvenile Disposition Act of 2003 addresses a number of areas where current law and practice in the District is not only out of step with modern rehabilitative models, but also where our community's safety is placed at risk because youth are not held accountable. The Act addresses three areas: (1) unjustified dismissals of delinquency cases, sometimes before and sometimes after, a finding of guilt; (2) a failure to hold youth accountable for violating court orders, including stay-away orders; and (3) the inability of juvenile prosecutors to seek an extension of an adjudicated offender's probationary period.

The central theme that this Act seeks to address is accountability. As I noted earlier, the Mayor did not propose a wholesale expansion of the transfer statute—one that would mandate

¹⁴ The legislation does permit disclosure of testimony to prosecutors, law enforcement personnel, when required by court rule implementing the Jencks Act, when directed by court order, or when necessary to provide information to a grand jury.

that 15 year olds charged with violent crimes be defined as adults, or one that would lower the age of transfer. In making that decision, he has committed to ensuring that our community is not placed in danger from those who remain in our juvenile system. To accomplish this, youth in our juvenile justice system must be held accountable.

Accountability is not just required to protect our neighborhoods, it is equally important if we are to rehabilitate our youth. Study after study demonstrates that traditional philosophies regarding rehabilitation--philosophies that ignore accountability--fall short. Excusing bad behavior under the ruse that children think differently and are thus not accountable is now recognized as a disservice to our youth.

The most widely accepted approach to juvenile rehabilitation is the Balanced and Restorative Justice (BARJ) model. BARJ rests on three basic principles: (1) Accountability, (2) Community Safety and (3) Competency Development. See U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP): *Guide for Implementing the Balanced and Restorative Justice Model*. December 1998 (hereafter "BARJ Guide"). The concept is simple: we must quickly call our youth to task when they deviate from acceptable standards of behavior. If we fail to do this, or if we only do this intermittently, we undermine the lesson. The result of this is that youth fail to learn that bad behavior yields consequences. Under our current system, many young offenders are not taught this important lesson. Unfortunately, they learn about accountability when it is too late—when they end up in the adult criminal system.

Accountability requires that a juvenile be required to take responsibility for his or her behavior and be required to repair the harm. The Balanced and Restorative Justice model states:

Holding a juvenile offender 'accountable' in the juvenile justice system means that once the juvenile is determined to have committed law-violating behavior, by admission or adjudication, he or she is held responsible for the act through consequences or sanctions, imposed pursuant to law, that are proportionate to the offense. Consequences or sanctions that are applied swiftly, surely, and consistently, and are graduated to provide appropriate and effective responses to varying levels of offense seriousness and offender chronicity, work best in preventing, controlling, and reducing further law violations.

U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP): *Focus on Accountability: Best Practices for Juvenile Court and Probation*, August 1999.

Sections 603 and 604 of the Juvenile Disposition Act of 2003 seek to clarify the law and end the practice of dismissals of juvenile cases. Existing practice in the District's Family Court results in the unjustifiable dismissal of far too many cases—some even before an adjudication on the merits. Over the years, a practice has evolved under Juvenile Court Rule 48(b), to dismiss cases for so-called "Social Reasons." The Court's implementation of Rule 48(b) has effectively undermined the existing statute governing dismissals (D.C. Code § 16-2317(c) and (d) (2001)).

The statute needs to be changed to ensure greater accountability and more consistent standards regarding dismissals.

In 2002 alone, 90 cases were dismissed under Rule 48(b): 34 of these were dismissed before the court reached the issue of whether the youth committed the offenses. The remaining 53 were dismissed despite the fact that a judge found that the juvenile committed the offenses. See Title VI: Exhibit A. In 1997, judges dismissed 85 petitioned cases under Rule 48(b) before determining whether the youth committed the offenses. In many of these cases, the only basis for the dismissal was that the youth was receiving services in another case or in another system.

Dismissal of these cases deviates from the notion of accountability. It sends a clear message to youth that is contrary to the message we ought to be sending. It tells youth that they may not be called upon to accept responsibility for their crimes. Not surprisingly, some of these youth then re-offend, having learned the lesson that the existence of one case grants them immunity from accountability.

One particularly startling example reveals that a youth who first became known to the juvenile system at age 9, had, by the age of 15, no less than 24 arrests for different crimes. His first arrest resulted in diversion and services were provided to him and his family. Shortly after completing diversion, he was re-arrested for first-degree burglary. Pending trial, and while released to the community, this young man was re-arrested and charged with unauthorized use of a motor vehicle--UUV. The court dismissed both pending cases—though it was clear that the juvenile was in need of rehabilitative services. Within months, he was re-arrested and again charged with UUV. In the course of the next year, he was re-arrested six more times. His crimes included another burglary, theft, UUV, assault with a dangerous weapon (knife), and robbery. By the time this offender was 15, he had 24 arrests in the District alone: including two for violent rapes. Of his 24 arrests, OCC petitioned 20. Six of his 20 cases—30 percent—were dismissed by the court under Rule 48(b). Today, he sits in an adult jail in another State, awaiting charges of rape in that jurisdiction as well.

In dismissing these cases, the court not only sends the wrong message to offenders—it ignores reality and rewrites history. If a young offender is not rehabilitated, an adult criminal court should know what really took place when he was a juvenile. By dismissing these cases, juvenile judges rewrite history and do a great disservice not only to our youth, but also to our community. This practice also reinforces the message that victims are ignored by the juvenile justice system. Indeed, as recently as last month a victim in a case whose car was stolen by a juvenile, took the day off of work, came down to court and spent the morning waiting for the trial to commence—only to be told that he would not have his day. Instead, the court decided that because the offender was committed in another case, it was unnecessary to adjudicate the offense. The judge made no findings that would warrant dismissal, he simply decided that there was no purpose in going forward because the youth already had another case. Both the victim and the police officer who had arrested the offender, left the court disgusted with the system. The victim left wondering what had taken place and why, after suffering a loss and taking time to come to court, the justice system did not care to hear his story. The officer left wondering why he bothered to arrest juveniles when there are no consequences. Stories like these are not uncommon and leave members of our community feeling victimized a second time.

The Juvenile Disposition Act of 2003 would first require that the question of guilt surrounding the allegations in a delinquency petition be adjudicated before a judge may consider whether dismissal is appropriate. In so doing, it would send a clear message to offenders that they are accountable for each crime they commit. This change would also recognize that victims of these crimes also have the right to their day in court.

The Act requires that the merits of the charges be adjudicated and a hearing be scheduled to determine a disposition. Indeed, rather than simply summarily dismissing a case after finding that the crimes were committed, this change would require that the court make specific findings regarding whether the offender is in need of care and rehabilitation. Only when a youth can demonstrate that, despite his crime, he is not in need of care and rehabilitation, should a dismissal of the adjudication be permitted. The Act would not permit the court to simply dismiss a case because the offender is already receiving services. In so doing, this law would ensure that the very basic concepts of accountability are recognized.

This law would not adversely affect youth who are better served through a diversion or similar alternative to adjudication. Over 700 youth each year are placed in diversion or some similar non-adjudication program. See Title VI: Exhibit A. Indeed, those who work in the juvenile system seek, each and every day, to divert eligible youth and give them the benefit of receiving services without an adjudication. In 2002, for example, over 600 juveniles were placed in diversion or some similar program to resolve their cases short of adjudication. Though final numbers are not available for all 2003 cases, the number of youth who were diverted or given other non-adjudication options appears to have increased to nearly 700. The law would not reduce the number of youth who could be placed in such programs. Instead, it would simply hold accountable those youth whose offenses or pattern of behavior necessitates an adjudication.

In keeping with this important concept of accountability, Section 602 of the Juvenile Disposition Act of 2003 gives law enforcement officers the authority to arrest youth who violate court orders. Under existing law, neither law enforcement officers nor victims may be told of the existence of a stay-away order, nor may they be enforced. Such orders are effectively meaningless. Juvenile offenders who have been court ordered to stay away from victims, witnesses or particular areas routinely ignore such orders. Not only does this fail to hold youth accountable, it places victims, witnesses and others in the community at greater risk. Together with Sections 302(a)(7) and (b)(4) of the Juvenile Confidentiality Act, Section 602 would require that juveniles be held accountable for compliance with court orders, including stay-away orders. Section 302 of the bill would allow victims, witnesses, and police officers to be informed of stay-away orders and Section 602 would give police the authority to enforce those orders. Enactment of these provisions is critical to increasing accountability and protecting our community.

Finally, Section 605 of the Juvenile Disposition Act of 2003 would amend the statute to allow juvenile prosecutors to request that an offender's period of probation be extended. Under existing law, only the Court's own Social Services Division is entitled to make such a request. By extending this to juvenile prosecutors, it enables the Office of the Corporation Counsel to also seek an extension of probation where circumstances regarding a juvenile's adjustment on probation warrant such an extension.

Title VII – Juvenile Failure to Appear Offense Act of 2003

The Juvenile Failure to Appear Offense Act of 2003 is designed to hold youth accountable to the juvenile justice system. As I have previously testified, accountability is a cornerstone to the Balanced and Restorative Justice (BARJ) model of rehabilitation. Youth must know that there are swift, sure, and predictable consequences for their failure to take their delinquency matters seriously. The City cannot provide care and rehabilitation to youth unless, at the very least, they appear at court.

The Juvenile Failure to Appear Offense Act of 2003 addresses the concerns that the community has, as reflected in a series of articles in *The Washington Post*, about youth who absent themselves from the juvenile justice system after delinquency charges are brought. It is everyone's fear that these youth will re-offend.

As of last week there were approximately 170 custody orders (juvenile bench warrants) outstanding for youth in our juvenile justice system who have failed to appear for court hearings. However, there is no statutory authority to charge these youth for failing to appear in court. Many are all too aware that there are no additional sanctions that are mandated against them.¹⁵ The Juvenile Failure to Appear Offense Act of 2003 rectifies this situation by making it a separate delinquent act for juveniles to willfully fail to appear for a court hearing.

Adults who fail to appear for court hearings are subject to criminal prosecution pursuant to D.C. Official Code § 23-1327. That statute is commonly referred to as the Bail Reform Act. The proposed legislation to hold juveniles accountable for their failure to appear at court was based on that provision. The proposed legislation attempts to modify the provisions of that statute to the needs of the juvenile justice system. Specifically, it was our intent to recognize that parents of youth have a responsibility to ensure that their children attend court hearings. To that end, the legislation includes a provision that provides that if notice of court hearings is served on a child's parent or guardian, use of that notice could be relied upon by the court to sustain a finding that the child willfully failed to appear for the hearing.

After additional consideration of that subsection of the legislation,¹⁶ it now appears that the parental notice provision, as submitted, may not provide sufficient notice to the child, and should be revised. We believe that the better practice is that which the Council enacted in the adult statute, that is, to require proof that a juvenile received actual notice of the court hearing or, in the alternative, that the juvenile personally created a situation that thwarted any attempt at serving such notice. Obviously, neither a youth nor an adult should be able to rely on the fact that they are on the run to avoid their court obligations. Accordingly, OCC recommends that

¹⁵ In the existing case the most severe sanction that the judge can impose is committing the youth to the Department of Human Services. That agency loses jurisdiction over the youth at the youth's 21st birthday. See D.C. Official Code §§ 16-2320(c) (2) and 16-2303.

¹⁶ The subsection at issue is found on lines 3-6 of page 29 of B15-537.

the Council substitute the language found in D.C. Official Code § 23-1327 (c)(1) and (2) for the language on page 29, lines 3-6 of the Juvenile Failure to Appear Offense Act of 2003.¹⁷

As modified, the bill would establish an offense for a child's willful failure to appear for a delinquency hearing. It would also establish a presumption that a child who fails to appear for a delinquency hearing is in need of care or rehabilitation. The court, defense attorneys and probation officers will be able to truthfully tell juveniles that there are consequences for not appearing for court hearings and that they will be held accountable.

Title VIII – Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability Amendment Act of 2003

Beginning in the mid 1960s and early 1970s, federal and local governments recognized the need to grant rights and provide assistance to victims of crimes. In 1980 Wisconsin passed the first "Crime Victims' Bill of Rights." See Title VIII Exhibit A. In the year 2004, victims of juvenile crimes in the District of Columbia enjoy neither the protections afforded to victims in other jurisdictions, nor those afforded to victims of crimes perpetrated by adults in the District of Columbia.

Although there is no distinction between the types of crimes prosecuted by OCC versus the Office of the U.S. Attorney, there is a clear disparity between the rights and services afforded to victims of juvenile crimes and those afforded to victims of adult crimes. Victims of juvenile crimes are not afforded the same protections merely because they suffered at the hands of juveniles. This Title, along with Title III – Confidentiality of Juvenile Records Act of 2003, and OCC's newly created Crime Victim Unit, will go a long way to ensuring that victims of juvenile crimes receive the rights, protections, and services that they deserve.

Currently, victims and witnesses in proceedings against juvenile offenders are frustrated by a system that:

- limits their ability to receive the results of HIV/AIDS¹⁸ testing until after the time when medical decisions about their health need to be made;

¹⁷ The following language should be offered as an amendment in place of lines 3-6 on page 29 of B15-537: "(c) The Division may find that the allegation that the child willfully failed to appear before a court or judicial officer has been established by proof beyond a reasonable doubt under this section even if the respondent has not received actual notice of the appearance date if (1) reasonable efforts to notify the respondent have been made, and (2) the respondent, by his or her own actions, has frustrated receipt of actual notice."

¹⁸ In 1995, Chapter 39 of the D.C. Official Code was enacted. This Chapter provides for HIV testing of certain criminal offenders, including juveniles, and the limited release of that information to the victims of those crimes. However, victims may not learn the results of blood testing until after the youth have been adjudicated. Unfortunately, due to this delay, victims must decide whether to submit to the medical risks, inconveniences and expenses associated with medical treatment before they can obtain the results of their assailants' blood tests and know whether these treatments are necessary. According to the Center for Disease Control and Prevention, for maximum treatment effectiveness HIV treatment should be initiated within 72 hours of the most recent assault. See Title VIII Exhibit B. The proposed legislation would allow the court to hold a hearing to determine if there is probable cause to believe that the victim or witness may have been put at risk for HIV/AIDS and then order the

- excludes them from fact-finding (trial), disposition (sentencing), and post-disposition hearings;
- does not automatically permit victims and witnesses to testify in court about the effect the juveniles' offenses have had on them and their families;
- does not require the court to consider victim impact statements prior to issuing a disposition order;
- places no financial responsibility on juveniles or their parents for the cost to victims of delinquent acts, even where the juveniles or parents have the ability to pay; and
- does not afford them such basic rights as the right: to be informed, to be treated with dignity, and to be protected.

The Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability Amendment Act of 2003 grants to victims of juvenile crimes, rights similar to those given in other states, and those afforded by D.C. Official Code §§ 23-1901 and 23-1904 to victims of adult offenders. See Title VIII Exhibit C. When people are victimized they receive the same emotional and physical trauma, regardless of whether they suffered at the hands of an adult or a juvenile. Victims deserve the same protections, regardless of the age of their offender.

The Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability Amendment Act of 2003 would grant victims of juvenile offenders, the following long-overdue rights:

1. The Right to be Present at Hearings:

Every jurisdiction, except the District of Columbia, affords victims some access to juvenile hearings or records. (See Title III Exhibit A.) B15-537 recognizes that victims and witnesses who testify at juvenile proceedings frequently require the emotional support of family members during these proceedings. The bill carefully balances the interests of victims in being able to attend disposition and post-disposition hearings and the current preference to have juvenile proceedings confidential to the general public. The bill strikes this balance by mandating that individuals who attend fact-finding, disposition and post-disposition hearings be bound by the juvenile confidentiality requirements found in D.C. Official Code §§ 16-2331, 16-2332, and 16-2333. Unlawful disclosure of the information obtained at these hearings may be prosecuted by OCC pursuant to D.C. Official Code § 16-2336.

2. The Right to Present a Victim Impact Statement:

youth to undergo blood testing. The results of these tests would be presented to the Office of the Corporation Counsel, who will provide the information to the affected party. The probable cause hearing and the order for the blood testing could be done at any time during the proceedings and, thus, results of the HIV/AIDS testing can be given to victims and witnesses in a timeframe that may eliminate needless HIV treatment, or the worries associated with a decision not to undergo treatment.

By 1998 "all states, the District of Columbia, and the federal government had enacted victim impact statement laws to allow judges to weigh the financial, physical, and emotional impact of a crime on its victim in establishing appropriate sentencing for the defendant."¹⁹ However, under the current law the Family Court is not required to consider any victim impact statements submitted by OCC in juvenile matters, nor hear from any witnesses or victims about the effect of their victimization.²⁰ This bill grants the right to victims of juvenile offenders, similar to those given in D.C. Official Code § 23-1904 to victims of adult offenders, to submit victim impact statements and it requires that the predisposition (pre-sentence) report include and take into consideration victim impact statements. It requires the court to take victim impact statements into consideration when fashioning an appropriate disposition (sentence).

Not only is this important in order to assure that victims and our community are represented,²¹ it is equally important in the rehabilitation of young offenders. Youth must personally see the consequences of their behavior. Currently, youth only see their victims at the time of the crime or, if the youth goes to trial, when the victim testifies. This legislation would allow youth to see the victim and hear, from the victim in a safe environment, the impact that their behavior has on the victim's life. It is only by gaining empathy for the victim that youth will start on the path to rehabilitation.

3. The Right to Restitution:

In 1982, the President's Task Force on Victims of Crime called for mandatory restitution in all criminal cases, unless the presiding judge could offer compelling reasons to the contrary. By 1996, 29 states required a court to order restitution to the victim or state on the record the reasons for failing to order it. For general outline and state-by state breakdown, see Title VIII Exhibit D. "As of the end of the 1998 legislative session, two-thirds of the states have statutes that make the parent of a delinquent liable for restitution to the victim of the delinquent act: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kentucky, Maryland, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming."²²

¹⁹ New Directions from the Field: Victims' Rights and Services for the 21st Century, U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, May 1998, page 107.

²⁰ There is no statutory authority requiring courts to consider victim impact statements in juvenile delinquency cases. The sole appellate case to consider the issue, *In Re M.N.T.*, 776 A.2d 1201 (D.C. 2001), rejected a request that victim impact statements be ruled inadmissible in all juvenile disposition hearings and held that it was within the trial court's discretion to admit them if it found them material and relevant.

²¹ According to a national survey conducted from 1992 to 1994, 67% of victims were satisfied with prosecutors if they were allowed to submit an impact statement. Whereas only 18% were satisfied if they were not given an opportunity to do so. Alexander, E.K. and J.H. Lord, *A Victim's Right to Speak, A Nation's Responsibility to Listen*, Arlington, VA: National Victim Center, Mothers Against Drunk Driving, and American Prosecutors Research Institute: grant from the U.S. Department of Justice, Office for Victims of Crime, National Victim Center, 1994:40. Clearly by appearing at dispositions and submitting victim impact statements victims will find closure by articulating to the youth and the court the impact the crime had on their lives.

²² Szymanski, L., Parental Responsibility for the Delinquent Acts of Their Children, NCJJ Snapshot 4(7) Pittsburgh,

Unlike victims of adult crimes, who can sue defendants civilly or ask the court to order restitution pursuant to D.C. Official Code § 16-711, victims of juvenile crimes in the District have no avenue to receive restitution for medical and mental health expenses, lost wages or destroyed or stolen property.²³ The juvenile confidentiality statutes prohibit disclosing identifying information about offenders, so victims frequently do not have enough information to bring a civil suit. Current law does not grant victims the right to seek restitution against juveniles in juvenile matters.

The proposed legislation is based upon Maryland Code §§ 11-603 through 11-606, see Title VIII Exhibit E, and is similar in scope to Missouri's restitution statute, see Title VIII Exhibit F, that holds juveniles and their families financially responsible to the victims of juvenile crimes. In 2002 there were approximately 664 cases brought against juveniles where the lead charge was a crime against a person and 742 cases where the lead charge was a crime against property. This statute would at least permit some of these victims to seek reimbursement.

Requiring restitution also serves important rehabilitative and deterrent goals: it teaches youth that their actions have financial consequences and it gives their parents and guardians financial incentives to properly supervise their children and cooperate with rehabilitative efforts. The bill allows the court to order adjudicated delinquents and/or their parents or guardians to pay reasonable restitution, up to \$10,000, or, if they are financially unable to pay restitution, to order that the juveniles and/or their parents or guardians provide services to the community or the victim of equivalent value.

4. The Rights Afforded to Victims of Adult Offenders in the District of Columbia:

This bill establishes a Victims of Juvenile Offenders Bill of Rights that is similar to the rights given to victims of adult crimes under D.C. Official Code §§ 23-1901 and 23-1903. Among the protections granted to victims of juvenile crimes, the bill requires that victims and witnesses be treated respectfully, be notified of court hearings, be provided a waiting area separate from the youth who victimized them, be informed of financial assistance and compensation programs and the possibility of restitution, and be advised that they have a right to have property promptly returned by law enforcement personnel and the right to have the accused and his or her attorney identified themselves in any contact with the victim.

Title IX – Release of Certain Children in Need of Supervision Act of 2003

The Release of Certain Children in Need of Supervision Act of 2003 requires courts to make specific findings before they can place a child in need of supervision in a delinquency facility. The law should require that these children be returned to their families so long as it is safe for the court to do so.

PA: National Center for Juvenile Justice, 1999.

²³ The District's Crime Victim's Compensation fund only compensates for certain losses that result from crimes of violence.

These youth, commonly referred to as “persons in need of supervision” or “PINS”, are defined in D.C. Official Code § 16-2301 (8)(A), as children who are habitually truant from school without justification, have committed an offense committable only by children, or are habitually disobedient of the reasonable and lawful commands of their parents, guardians, or other custodians and are ungovernable. By agreement between the Office of the Corporation Counsel and the Director of Court Social Services my office prosecutes only a small percentage of these cases. The typical PINS case is diverted from the juvenile justice system.

Currently, under D.C. Official Code §16-2320 (d), youth who are found in need of supervision may be committed to or placed in an institution or facility for delinquent youth in two circumstances: (1) if they have also been found delinquent or (2) if they were previously adjudicated in need of supervision and the court specifies a placement at a delinquency facility. The proposed amendment adds the additional safeguard that requires the court to release the child to his or her family, unless the return of the child will result in placement in, or return to, an abusive situation or the child’s parent, guardian or custodian is unwilling or unable to care for or supervise the child. This additional safeguard derives from a recommendation to the Mayor by the Blue Ribbon Commission.

Title X – Periodic Evaluations Act of 2003

Title XI – Individualized Treatment Plan Act of 2003

These titles derive from recommendations to the Mayor by the Blue Ribbon Commission on Juvenile Justice and Youth Safety and reflect efforts to improve the delivery of services to youth on the programmatic side. By ensuring that timely and thorough assessments, treatment plans and periodic evaluations are completed, youth committed to the care of the Youth Services Administration will be better served.

Title XII- Parental Participation and Accountability Act of 2003

The more involved families are in their children’s lives the better the chances are that the youth will not be involved in the juvenile justice system. Similarly, the need for active family involvement in their children’s court proceedings and rehabilitation efforts cannot be overstated. Both the Blue Ribbon Commission and Title I of this Omnibus Act recognize that the goal of preserving and strengthening families, whenever possible, is critical to the rehabilitation of delinquent youth.

Unfortunately some parents and guardians require judicial encouragement to be actively involved in their children’s rehabilitative process. The City Counsel recognized that fact when it enacted D.C. Official Code §§ 16-2320 and 16-2325.01. As you know, in 1996 Law 11-199, the “Adjustment Process for Nonviolent Juvenile Offenders and Parent Participation in Court-Ordered Proceedings Act of 1996”, was passed. That statute enables the court to enter orders requiring parents and guardians to participate in their children’s rehabilitation. It granted judges, at their discretion, the authority to require parents and guardians to attend juvenile proceedings, parenting classes, counseling, treatment, educational programs or other court ordered programs. It provides that the court can hold individuals in civil contempt of court for failing to comply

with such orders. It also enables the court to issue bench warrants for any parents and guardians, who, without good cause, fail to appear at any juvenile proceeding or court ordered program. D.C. Official Code § 16-2320 expands on those powers. That section governs the disposition (sentencing) of youth who have been found to be delinquent. It allows the court to "...have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process..." D.C. Official Code § 16-2320(c) (2001).

The current law merely permits the court to order parents and guardians to participate in their children's rehabilitation. The Parental Participation and Accountability Act of 2003, amending D.C. Official Code § 16-2325.01, makes it mandatory. It requires the court to order parents and guardians to participate in their children's rehabilitation and it requires them to be present at juvenile proceedings and court ordered programs. Making this discretionary authority mandatory is critical because far too often, judges hesitate when asked to order parents to participate. By requiring their participation, the Council will send a strong message to judges, to juveniles, and to parents and caretakers that this community expects parents and guardians to participate and be accountable.

The legislation would also allow the court to require parents and guardians to submit to drug testing and, if the testing shows drug use, to participate in drug treatment programs. Each year approximately 60% of youth who are arrested test positive for drugs when they are tested prior to their initial hearing (arraignment). See Title XII Exhibit A.²⁴ Many of these children live in homes where drug abuse is common. It is difficult enough for young offenders who are regular users of illegal drugs to abstain from their use without trying to accomplish that task while their caretakers are abusing drugs. The courts must have the authority to ensure that youth in the juvenile justice system live in drug free households. At the very least, this legislation may prompt parents who are not currently willing to stay off drugs to seek the treatment that they may need so that both they and their children can become productive members of society.

In addition to the court's present ability to hold parents and guardians in civil contempt of court for failing to abide by participation orders, this Act would enable the Corporation Counsel to initiate criminal contempt proceedings against parents and guardians who willfully fail to comply with these orders. If convicted, the court would be empowered to issue fines in an amount not to exceed \$1,000 or imprison them for up to 180 days, or both.²⁵ This amendment gives a powerful incentive to these individuals to be actively involved in their children's lives. If the mere fact that their children have been arrested and are being prosecuted

²⁴ Title XII Exhibit A is a graph that was produced by the D.C. Pretrial Services Agency and reflects drug tests conducted prior to the juvenile's initial court hearing.

²⁵ The current defenses to civil contempt found in § 16-2325.01 (e) would apply in criminal contempt cases as well. Under this provision, it is a defense to a contempt charge if the parent or guardian with whom the child resides:

- "(1) Has an employment obligation that would result in the loss of employment if not complied with;
- (2) Does not have physical custody of the child and resides outside the District of Columbia; or
- (3) Resides in the District of Columbia, but is outside the District of Columbia at the time of the juvenile proceeding or court ordered program for reasons other than avoiding participation or appearance before the court, and participating or appearing in court will result in undue hardship to such parent or guardian."

is not incentive enough for increased involvement than perhaps the threat of criminal prosecution will prompt these individuals to make special efforts to accompany their children to court and participate in court ordered programs.

Before concluding, I would like to share some thoughts regarding just a few of the provisions introduced by Councilmembers Chavous, Brazil, Graham, and Mendelson:

Fines and Suspended Licenses

While the Mayor shares the Councilmembers' goal of holding parents and caretakers accountable for proper supervision of children, both the provision that would require the Mayor to fine parents and the provision to suspend driver's licenses raise concerns. These provisions establish little or no criterion upon which those sanctions are to be applied. Moreover, neither provision makes clear a nexus between the sanction and the behavior it seeks to deter or how it will serve the goal of rehabilitation.

The Mayor's Bill provides an approach to parental accountability that addresses all of these concerns. Both the Parental Participation and Accountability Act of 2003 and the restitution provision of the Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability Amendment Act of 2003 serve the common purpose of holding parents and caretakers accountable, while linking the sanctions with the delinquent behavior and the goal of rehabilitation. For example, by allowing victims to obtain restitution from juvenile offenders and their parents or caretakers, B15-537 links the sanction directly with the crime. Similarly, the Parental Participation and Accountability Act of 2003 holds parents and caretakers accountable based upon their participation, or lack thereof, in their child's rehabilitation and supervision.

Reporting Delinquency to Public Housing Authority for Eviction

The Administration is concerned that forcing low-income families from affordable housing will only serve to compound problems, rather than solve them. Of greatest concern is where poor families will live and the other resources that might be unduly burdened in trying to absorb the cost of such dislocations. Instead, the Mayor recommends enactment of the parental accountability measures included in B15-537, each of which provides reasonable alternatives that would not cause additional financial burdens to an already impoverished family.

Criminalizing Sale or Possession of Materials Intended to be Used as Implements of Graffiti

While the Mayor recognizes the substantial impact that graffiti and vandalism has on our neighborhoods, as well as the significance that graffiti may have within the gang community, the proposed offense would be difficult, if not impossible, to enforce and prosecute.

Extension of the Juvenile Curfew Law Hours

The Mayor shares Mr. Chavous's desire to ensure that youth are off the streets and at home with their families during the evenings. There is, however, a considerable body of data,

which suggests that youth are actually most vulnerable to offending and being victimized during the 2:00 to 6:00 PM time period. *See Juvenile Offenders and Victims: 1999 National Report.* U.S. Department of Justice: Office of Juvenile Justice and Delinquency Prevention Programs.

Title I: Purpose Clause Act of 2003 – Exhibit A
A Side-by-Side Comparison with the Blue Ribbon Recommendation

Title I – Purpose Clause Act of 2003	Blue Ribbon Recommendation	Comparison
<p>The proposed legislation provides for a preamble for the Purpose Clause.</p>		
<p>The preamble states: “Sec. 2300. The purpose of this chapter is to create a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will treat children as children in all phases of their involvement, while protecting the needs of communities and victims alike. In furtherance of this purpose, the following goals have been established: “(1) To provide due process through which juveniles and all other interested parties are assured fair hearings, during which applicable constitutional and other legal rights are recognized and enforced.</p>		
<p>“(2) To promote youth development and prevent delinquency through early intervention, diversion, and community based alternatives.</p>	<p>1. A guarantee of due process for juveniles;</p> <p>2. A reduction of recidivism with proactive intervention to stem youth violence;</p>	<p>The proposed legislation expands on the Blue Ribbon Commission’s recommendation to guarantee due process to juveniles by recognizing that juveniles, and all other interested parties, should receive constitutional and other legal rights.</p> <p>The proposed legislation combines the concepts underpinning the Blue Ribbon Commission’s second (2) and third (3) recommendations by recognizing that early intervention, diversion, and community based alternatives are the proactive interventions necessary to reduce juvenile recidivism.</p>
	<p>3. The development of meaningful prevention strategies to address delinquent behavior;</p> <p>4. The preservation and strengthening of families, whenever possible;</p>	<p>See previous comment.</p>
<p>“(3) To preserve and strengthen families whenever possible and to remove a child from the custody of his or her parents, guardian or other custodian only when it is determined by the appropriate authority to be in his or her best interests or when necessary for the safety and protection of the public.</p> <p>“(4) To hold a child found to be delinquent accountable for his or her actions to the extent of the child’s age, education, mental and physical condition, background and all other relevant factors.</p>	<p>5. Delinquent youth are held responsible for their actions;</p>	<p>Along with paragraphs (5) and (7) of the proposed legislation, this paragraph recognizes the goal of preserving and strengthening families whenever possible. However, the proposed legislation recognizes that it may not always be in the youth or the community’s best interests to place youth with their families. See comment to paragraph (8), below.</p> <p>The proposed legislation is consistent with the Blue Ribbon Commission recommendation that delinquent youth be held responsible for their actions. However, it recognizes that there are numerous factors that must be considered in determining accountability.</p>

Title I: Purpose Clause Act of 2003 – Exhibit A
A Side-by-Side Comparison with the Blue Ribbon Recommendation

“(5) To place a premium on the rehabilitation of children with the goal of creating productive citizens and to recognize that rehabilitation of children is inextricably connected to the well-being and strength of their families.	6. A commitment to the rehabilitation of children;	The proposed legislation seeks more than to merely rehabilitate youth. It sets the goal of creating productive citizens. It, along with paragraph (3), recognizes that youth's families are a key to the rehabilitative process.
	7. Recognition of the ability to promote rehabilitation of children who are substance abusers;	The legislation does not include a provision that singles out the need for substance abuse treatment. Substance abuse treatment, like attention to mental health and educational needs are all necessary to rehabilitate youth.
“(6) To serve children in their own neighborhood and communities whenever possible.	8. A commitment to provide services in neighborhoods whenever possible and appropriate;	
“(7) To achieve the foregoing goals in the least restrictive settings necessary, with a preference at all times for the preservation of the family and the integration of parental, guardian or custodial accountability and participation in treatment and counseling.	9. Achievement of all goals in the least restrictive settings possible;	The proposed legislation supports the Blue Ribbon recommendation that youth should be rehabilitated in the least restrictive settings possible and it recognizes that that rehabilitation requires efforts directed at the youth's family. This recognizes that families are an integral part of the rehabilitation process and frequently should be held accountable for the children's behavior and must participate in treatment and counseling. This paragraph foreshadows the parental participation and Accountability Act of 2003 that is included in the Omnibus Legislation.
	10. Governmental accountability for the provision of reasonable rehabilitation;	Rather than list a general provision that calls for governmental accountability, the Omnibus Bill, in Title X - Periodic Evaluations Act, and Title XI- Individual Treatment Plan Act – gives the basis for accountability
“(8) To provide for the safety of the public at large.	11. A guarantee to provide for the safety of the public, at large;	
	12. Recognition of the need to provide services to victims of juvenile crimes.	The recognition of the need to protect the rights of victims was moved to the preamble. Rather than list a general provision that recognizes the need to provide services to victims of juvenile crimes, the Omnibus Bill, in Title VIII – Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability Amendment Act of 2003 – gives specific rights to the victims of juvenile crime.

Title II: Juvenile Competency Act of 2003 - Exhibit A

Sampling of State Juvenile Code Provisions for Juvenile Competency to Stand Trial

Adapted from: the Virginia Commission on Youth Analysis of State Statutes Referenced, Fall 1998

	Juvenile Offense Types	Permissible Basis for Incompetence Finding	Number of Evaluators or Evaluations	Qualifications of Evaluators	Location of Evaluation	Timeframes	Report Components
AZ	Delinquency; Incurrigibility; Criminal Proceeding	Not Mental illness or Mental retardation alone	2 or more	Physician ¹ Psychologist	May be inpatient if client will not submit to evaluation. Or adequate exam is not possible on outpatient basis.	Conducted NTE 30 days + 15 day extension. Report completed within 30 days.	Name of each expert; description of exam and any test results; description of facts for basis of conclusion; opinion as to competency. If incompetent, nature of mental disorder; prognosis; most appropriate form and place of treatment in state; whether incompetent to refuse treatment; necessity for and limitations of psychotropic medication. Report sealed.
FL	Delinquency only	Mental retardation; Mental illness	2-3	Mental Health professionals who have completed approved training program (mental illness only)			Capacity to appreciate charges and penalties, understand adversarial nature of proceedings, disclose pertinent facts to counsel, display appropriate behavior in court, testify relevantly. If incompetency is from MI/MR, must address whether treatment or training is needed.
KS	Delinquency only	Mental retardation; Mental illness	2	Physician; Psychologist	Outpatient. If need inpatient, may commit for up to 60 days + 60 day extension.		
LA	Delinquency only		2-3	Physician; ² Psychologist		Completed w/in 30 days of order.	
MA	Delinquency only	Mental retardation; Mental illness	1 or more	Physician; Psychologist	Whenever practicable, in Court- house or place of detention; follow-up inpatient evaluation if needed	NTE 20 days + 20-day extension	Clinical findings bearing on issue of to whether defendant needs treatment Format of report included in statute

NTE - Not to Exceed

¹ Familiar with state's competency standards and statutes; familiar with the treatment, training & restoration programs that are available in the state; certified by the court as meeting court developed guidelines using recognized programs or standards. At least one must be a psychiatrist. Defendant and state may stipulate to only one expert.

² Physicians who are licensed to practice in medicine in Louisiana and who have been in the actual practice of medicine for not less than three consecutive years immediately preceding the appointment and who are qualified by training or experience in forensic evaluations. No more than one may be a coroner or any one of his deputies. In lieu of one physician, a psychologist who is licensed to practice in Louisiana and has been doing so for 3 years may be appointed.

Title II: Juvenile Competency Act of 2003 - Exhibit A

Sampling of State Juvenile Code Provisions for Juvenile Competency to Stand Trial

Adapted from: the Virginia Commission on Youth Analysis of State Statutes Referenced, Fall 1998

Juvenile Offense Types	Permissible Basis for Incompetence Finding	Number of Evaluators or Evaluations	Qualifications of Evaluators	Location of Evaluation	Timeframes	Report Components
MN	Mental retardation; Mental illness	1	Physician; Psychologist ³	Outpatient. Inpatient if needed (or child not entitled to release)	NTE 60 days	Notify Court immediately if imminent danger to another person or imminently suicidal seek emergency treatment. Report: diagnosis, understand proceedings and participation. If incompetent, what measures needed to attain competency. Rank treatment alternatives/placements in order.
NE	Any case under Juvenile Code	1	Physician; Psychologist ⁴	Residential or nonresidential	NTE 30 days + 30 days extension	Basic needs of juvenile; recommendations; long-term care.
NM	Delinquency; Status Offense	1				
NY	Mental retardation; Mental illness; Develop-mentally disabled	2	Physician; Psychologist	Outpatient		
SC	Criminal or civil contempt	2	Other ⁵	Any suitable place	If conducted inpatient, NTE 15 days +15 day extension. Exam w/n 15 days of receipt court order; report w/n 5 days.	Diagnosis clinical findings bears on whether person is capable of understanding the proceedings and assisting in defense, and if there is substantial probability that he will attain that capacity in the foreseeable future.

NTE - Not to Exceed

³ Licensed physician or licensed psychologist "who is knowledgeable, trained and practicing in the diagnosis and treatment of the alleged impairment"

⁴ "Physician, surgeon, psychiatrist, duly authorized community health service program, or psychologist"

⁵ "Examiners designated by the Dept. of Mental Health ... or ... the Dept. of Disabilities and Special Needs ... or by both..."

Title II: Juvenile Competency Act of 2003 - Exhibit A

Sampling of State Juvenile Code Provisions for Juvenile Competency to Stand Trial

Adapted from: the Virginia Commission on Youth Analysis of State Statutes Referenced, Fall 1998

	Juvenile Offense Types	Permissible Basis for Incompetence Finding	Number of Evaluators or Evaluations	Qualifications of Evaluators	Location of Evaluation	Timeframes	Report Components
TN	Delinquency; Unruly	Mental retardation; Mental illness					
TX	Delinquency; Status Offense	Mental retardation; Mental illness	1	Psychologist; Other ⁶			
VA	Delinquency only			Psychiatrist; Clinical psychologist; Licensed clinical social worker ⁸	Outpatient unless hospitalization necessary or juvenile is already hospitalized	Hospitalization not to exceed 10 days. Report filed no more than 14 days after receipt of all req'd info.	Capacity to understand proceedings, ability to assist attorney, need for services if found incompetent, description of suggested necessary services, least restrictive setting capable of restoring to competence.
WI	Delinquency only			Physician; Psychologist	Outpatient unless a risk to self or others or guardian agrees to inpatient.	Hearing 10 days after plea for juvenile in secure custody; 30 days if not in secure custody.	Nature of exam; identify those interviewed, records reviewed, tests administered; present capacity to understand proceedings and assist in his or her defense; likelihood or restoration; facts upon which opinions are based.
WY	Delinquency only			Physician; Psychologist	Outpatient	If inpatient is needed, eval. NTE 15 days	

NTE - Not to Exceed

⁶ "Physician, psychiatrist, psychologist ... if examination is to determine ... mentally retarded, the examination must [include] an interdisciplinary team recommendation.

⁷ Licensed and qualified physician, surgeon, psychiatrist designated by the court to aid in determining the physical and mental condition of the child."

⁸ Who must be "qualified by training and experience in the forensic evaluation of juveniles."

Title II: Juvenile Competency Act of 2003 - Exhibit B **Sampling of State Juvenile Code Provisions for Restoration of Juvenile Competency to Stand Trial**

Adapted from: the Virginia Commission on Youth Analysis of State Statutes Referenced, Fall 1998

	Restorative Environments	Restoration Process	Reports	Hearings	Restoration Services Until	If Unrestorable	Dismissal of Charges	Other
AZ	Least restrictive environment	Establish probable cause; start within 6 months of finding of incompetency; 180 days with 6-month extensions	Every 60 days	Every 6 months	If Dangerous Juvenile: until 15-21 months or maximum sentence exceeded If Other: cannot restore within 240 days; turns 18; or maximum sentence expired.	Attempt to commit	Misdemeanor: with prejudice Felony Not a serious offense - with prejudice Serious offense - without prejudice	Must appoint <i>guardian ad litem</i>
FL	Least restrictive alternative consistent with public safety. Court determines whether child meets criteria for secure placement ¹	Treatment plan created/ submitted within 30 days. Felony: commit for treatment or training. Misdemeanor: no restoration. If incompetent because of age or immaturity or anything not MI/ MR: no restoration	Every 180 days	Every 6 months	2 years	Dismiss	If not restored at 2 years and cannot be restored within additional year	
KS	Commitment for treatment up to 90 days							
LA		Commit/place in custody of parents/suitable person in conditions in the best interests of the child and the public			Time of maximum disposition	Release on probation/place in custody of suitable person/ commit to suitable treatment facility		
MA	Hospitalize	Observe up to 40 days; NTE 50 days total (incl. initial comp. Evaluation); may commit up to 6 months + 1 year extension			Time of minimum sentence before eligible for parole			Periodic reviews
MN	Felony only - commitment. If doesn't meet commitment criteria, file CHIPS (Child in Need of Protection and Services) or release.	Every 180 days					Delinquency: 19th birthday/21st if extended jurisdiction Delinquency cases: 1 year, Cases pending certification: 3 years	
NM		Judge may order treatment.					Mistrial if found incompetent during adjudicatory hearing	

¹ Requires secure placement if cannot survive with help of willing family/friends/alternative services or will inflict serious bodily harm to self or others and less restrictive setting is inappropriate

Title II: Juvenile Competency Act of 2003 - Exhibit B

Sampling of State Juvenile Code Provisions for Restoration of Juvenile Competency to Stand Trial

Adapted from: the Virginia Commission on Youth Analysis of State Statutes Referenced, Fall 1998

	Restorative Environments	Restoration Process	Reports	Hearings	Restoration Services Until	If Unrestorable	Dismissal of Charges	Other
NY	For a designated felony, in a residential facility	Misdemeanor: commit for up to 90 days (dismiss petition); Felony: commit for up to 1 year; may extend annually	45 days; every 90 days	Annually	A reasonable period of time to determine whether will attain capacity in foreseeable future/18 th birthday	Dismiss	On 18 th birthday	Time spent in the custody counts towards disposition time
SC					Maximum sentence	Initiate commitment proceedings within 60 days; if not committed, release, dismiss charges		
TN		Initiate commitment or voluntary admission if meets criteria; if doesn't meet criteria, release to appropriate guardian						
TX		Temporary or extended mental health services may be ordered if incompetent			Treat until 120 days after turns 18	If discharged before age 18, may dismiss with prejudice or continue. If not discharged by 18, transfer proceedings to Criminal Court.		
VA	Non-secure community setting or secure facility.		Every 3 months	Every 3 months	Restored or court finds that juvenile is likely to remain incompetent for foreseeable future.	Civil commitment; CINS petition filed; or released	Misdemeanor: one year from arrest. Felony: three years from arrest.	
WI			Every 3 months				12 mos. or max. sentence for adult committing alleged act.	
WY		Commit if meets criteria and discuss charges. If does not meet criteria, may continue with adjudication and disposition.						

Title III: Juvenile Confidentiality Act of 2003

Comparison of State Confidentiality Provisions: Are Proceedings & Records Generally Open to the Public

(based on information from the National Center for Juvenile Justice, the U.S. Department of Justice: OJJDP, and a Review of Selected State Statutes and Constitutions—current through 2003)

State	Proceedings may be open to public*	Proceedings may be open to victim*	Information may be available to public**	Information may be available to victim**
Minimum Totals:	24	32	46	50
Alabama				■
Alaska	■	■	■	■
Arizona		■	■	■
Arkansas	■	■	■	■
California	■	■	■	■
Colorado	■	■	■	■
Connecticut			■	■
Delaware	■	■	■	■
District of Columbia				
Florida	■	■	■	■
Georgia	■	■	■	■
Hawaii		■	■	■
Idaho	■	■	■	■
Illinois			■	■
Indiana	■	■	■	■
Iowa			■	■
Kansas	■	■	■	■
Kentucky		■	■	■
Louisiana	■	■	■	■
Maine	■	■	■	■
Maryland		■		■
Massachusetts	■#	■#	■	■
Michigan	■	■	■	■
Minnesota	■	■	■	■
Mississippi			■	■
Missouri		■	■	■
Montana	+	+	■	■
Nebraska	+	+	■#	■#
Nevada	+	+	■	■
New Hampshire		■	■	■
New Jersey	■	■	■	■
New Mexico	■	■	■	■
New York			■	■
North Carolina			■	■
North Dakota	■	■	■	■
Ohio	■	■	■	■
Oklahoma	■	■	■	■
Oregon		■	■	■
Pennsylvania	■	■	■	■
Rhode Island				■
South Carolina			■	■
South Dakota		■		■
Tennessee			■	■
Texas	+	+	■	■
Utah	■#	■#	■	■
Vermont			■#	■
Virginia	■	■	■	■
Washington	+	+	■	■
West Virginia			■	■
Wisconsin	■	■	■	■
Wyoming			■	■

*See attachment, summarizing scope/limit of jurisdiction's provisions regarding opening proceedings/hearings to the public and to the victim.

** See attachment, summarizing scope/limit of jurisdiction's provisions on the release of information/records to the public and to the victim.

+ Indicates that the state statutes could not be located during this research project. However, in some instances, State Constitutions seem to indicate that victims have a right to information and to be present during court proceedings.

Source – Szymanski, L. Public Juvenile Court Records. *NCJJ Snapshot* 5(10). Pittsburgh, PA: National Center for Juvenile Justice, 2000.

Title III: Juvenile Confidentiality Act of 2003

Comparison of State Confidentiality Provisions: Are Proceedings & Records Generally Open to the Public

(based on information from the National Center for Juvenile Justice, the U.S. Department of Justice: OJJDP, and a Review of Selected State Statutes and Constitutions—current through 2003)

Legend:

* Summarizes scope/limit of jurisdiction's provisions regarding opening proceedings/hearings to the public and to the victim.

** Summarizes scope/limit of jurisdiction's provisions on the release of information/records to the public and to the victim.

Alabama	** Petition, motions, dispositions, and court notices are open for inspection by victim (or representative).
Alaska	<p>* Hearings on the petition are open to the public if a motion is filed to open the hearing and if (1) petition alleges an offense and juvenile has knowingly failed to comply with department or court ordered condition, or (2) offense alleged is a felony equivalent or involves use of deadly weapon, or is arson, burglary, distribution of child pornography, or promoting prostitution if the first degree. Hearings on the petition are also open to public if (1) the juvenile is charged with certain drug offenses, or, (2) the offense is a felony and the juvenile was 16 or older at time of offense and the juvenile has at least one other felony equivalent adjudication, or, (3) the juvenile agrees to a public hearing.</p> <p>** Identity of juveniles charged with certain offenses who are at least 13 at the time of the offense and who have either violated conditions or have a prior adjudication of certain offense(s) will be made public (this includes parent name and address). If the victim suffering personal injury or property damage from the juvenile's offense knows the juvenile's identity and identifies the juvenile and the offense to the court, and if the victim certifies that the information is to be used only for pursuit of a civil action against the juvenile or the juvenile's parent/guardian, the victim is entitled to inspect the petition and court order or judgment disposing of the petition.</p>
Arizona	<p>* Victims have the right to be present and heard at all detention hearings and at all hearings addressing restitution where a juvenile is charged with an offense which, if committed by an adult, would be (1) a felony, or (2) a misdemeanor involving physical injury, the threat of physical injury, or a sexual offense.</p> <p>** Certain juvenile arrest records, records of delinquency hearings, records of disposition hearings, summaries of delinquency, disposition and transfer hearings, records of revocation of probation hearings and diversion proceedings are all open to public inspection. The court may order that these records are confidential if it determines that a public interest in confidentiality requires it. Law enforcement officials must provide the victim information about whether the juvenile will be released or detained pending a detention hearing.</p>
Arkansas	<p>* The juvenile has a right to an open hearing.</p> <p>** Detention facility shall release to public the name, age, and description of juvenile escapees, and any other relevant information to help capture the juvenile if juvenile could have been tried as adult. On written request, court or prosecutor may tell victim about the disposition of adjudicated juveniles.</p>
California	<p>* Proceedings are open to public when juvenile is charged with certain offenses to the same extent they would be open if the case were in adult court. In all other cases, proceedings may be opened at juvenile's request. Up to 2 family members of a witness may be present during that witness's testimony. Court may admit any person it believes has a legitimate interest in the case.</p> <p>** Records open to public – exception when there is petition from requesting party and opportunity for interested parties to object. Identity of juvenile may be released to public if juvenile of certain is charged with a violent offense and release of info would help with capture. Identity must be released to anyone requesting it if juvenile is an escapee. Name of juvenile adjudicated of certain offenses shall be open to public (unless judge orders confidential for good cause – safety of juvenile, victim, etc.</p>
Colorado	<p>* Open to the public unless court finds that it is in the best interest of the juvenile or of the community to exclude the general public.</p> <p>** Court and law enforcement records are open to victim. Law enforcement records are open to public if juvenile is adjudicated of certain offenses. Petitioning records, including juvenile's identity, are available to public.</p>
Connecticut	** Juvenile records are open to victim to same extent records would be open in adult matter. Identity information is public for escapees and/or when a felony warrant is outstanding.
Delaware	<p>** Proceedings where the juvenile is charged with a felony equivalent are open to public. All other proceedings are open to public only if judge determines it is in best interest of public.</p> <p>** Victim is to be notified of the release of the juvenile.</p>
District of Columbia	Neither the public nor the victim has a statutory right to records or to attend proceedings.

Title III: Juvenile Confidentiality Act of 2003

Comparison of State Confidentiality Provisions: Are Proceedings & Records Generally Open to the Public

(based on information from the National Center for Juvenile Justice, the U.S. Department of Justice: OJJDP, and a Review of Selected State Statutes and Constitutions—current through 2003)

Florida	<p>* All hearings must be open to public unless court finds it is in best interest of public and juvenile to close hearing.</p> <p>**Juvenile's identity may be released if juvenile is charged with a felony equivalent or if juvenile has 3 or more adult misdemeanor equivalent adjudications. Court and law enforcement shall release to the media the name and address of juvenile and parents if the juvenile offense is a felony or class A misdemeanor equivalent. Victim is entitled to the juvenile offense report.</p>
Georgia	<p>* Public shall be admitted to juvenile hearings if the juvenile is (1) charged with certain felony offense(s), (2) juvenile has prior adjudication (unless there is an allegation of sexual assault or a party intends to introduce certain evidence).</p> <p>** When juvenile who is adjudicated of certain felonies and who is in custody of the Dept. of Juvenile Justice is released from custody or confinement, the Dept. must inform the victim.</p>
Hawaii	<p>** Closed to public. Open to victim and witnesses (under 18 may have parent, etc. and attorney present)</p> <p>* Records open to public if juvenile is 14 or older and offense is amongst certain felonies or if juvenile has 2 or more prior felony adjudications. Victim and anyone else who may file suit related to case are entitled to juvenile's identity information.</p>
Idaho	<p>* Open to public if juvenile is 14 or older and offense if a felony equivalent (unless judge and prosecutor agree it is not in juvenile's interest).</p> <p>**Victim is entitled to juvenile's name, phone number, and address and parents' names, phone numbers, and addresses if that information is in court records. Records on all proceedings against juvenile 13 or younger (see *) are open to public unless court issues a written order to the contrary.</p>
Illinois	<p>**Juvenile's name, address, and disposition (or alternative) information are open to victim. Names, addresses, and offenses are open to public for certain offenses.</p>
Indiana	<p>* Court has discretion to determine if proceedings should be open to public; however, if the juvenile is alleged to have committed an offense that would be a murder if committed by an adult, then the proceeding is open to public. Court may close portions of proceedings during testimony of child witness or child victim.</p> <p>** Juvenile's name, age, offense, and chronological case summaries, motions, petitions are open to public for certain offenses.</p>
Iowa	<p>**If juvenile is an escapee, juvenile's name, offense, and facts of escape are released to public. Complaint for certain offenses and juvenile's name are open to public. Records of proceedings are public unless proceeding was closed by court.</p>
Kansas	<p>* Juvenile adjudicatory proceedings are open to public for juvenile 16 years and older. Adjudicatory proceedings for juveniles under 16 are open unless the court finds that it is not in the juvenile's best interest. The victim may not be excluded even if the court makes such a finding.</p> <p>** Official court files are open to public if juvenile is 14 or older. Official court files of juveniles under 14 are open to public unless judge determines otherwise. Law enforcement records of juveniles age 14 or older are open to public to same adult records are open.</p>
Kentucky	<p>* Victim has right to notice of and attendance at juvenile proceedings.</p> <p>** Public may inspect law enforcement and court records of juveniles adjudicated of a capital offense, certain felonies, or an offense where a deadly weapon is use, displayed, or involved. Juvenile records containing information about the arrest, petitions, adjudications, and dispositions may be available to victims and others entitled to attend the court proceedings.</p>
Louisiana	<p>* Open to public when juvenile is alleged to have committed certain violent offense(s) or when alleged offense is a felony equivalent and juvenile has a prior adjudication for a felony equivalent. For certain violent felony equivalent offenses, proceedings are open to victim, and victim's spouse, children, siblings, and parents.</p> <p>** Following a pretrial finding of probable cause, law enforcement shall release name, age, offense of the juvenile if the juvenile is charged with a violent offense or if charged with 2 or more felony equivalents. Court records are confidential unless juvenile is adjudicated of violent offense or on showing of good cause by a movant.</p>
Maine	<p>*After petition is filed, proceedings must be open to public for certain offenses.</p> <p>** Juvenile's identity is open to victim. When a proceeding is open to public, record of that proceeding is open to public.</p>
Maryland	<p>* Victim is entitled to attend juvenile adjudicatory proceedings.</p> <p>** Victim is entitled to notice of proceedings. Juvenile records are confidential absent a court order.</p>

Title III: Juvenile Confidentiality Act of 2003

Comparison of State Confidentiality Provisions: Are Proceedings & Records Generally Open to the Public

(based on information from the National Center for Juvenile Justice, the U.S. Department of Justice: OJJDP, and a Review of Selected State Statutes and Constitutions—current through 2003)

Massachusetts	<p>* State Constitution provides access to criminal proceedings as a right for victims.</p> <p>** Court records are confidential. Records of juvenile offenders charged by indictment are open for inspection in the same way that adult criminal records are open. Juvenile names are available to public if juvenile is between 14 and 17 of offense would carry prison time if committed by adult and if juvenile has 2 or more adjudications of offenses which would carry prison time if committed by adult.</p>
Michigan	<p>* Open to the public. Court may close the proceedings when a child witness is testifying or the victim is testifying.</p> <p>** Juvenile records are generally open to inspection by general public (some records may be confidential and open to inspection only by certain people).</p>
Minnesota	<p>* Victim is entitled to attend adjudication proceedings and has the right to have a non-witness present in the courtroom during his or her testimony. Court shall open proceeding to general public if the juvenile is charged with or adjudicated for a felony equivalent offense and if that juvenile is at least 16 at time of offense.</p> <p>** In certain cases, the victim may obtain the juvenile's name, age, information about the offense, and dispositional information. In all cases where the petition specifically names the victim, the victim is entitled to know the disposition of the case.</p>
Mississippi	<p>** Records of juveniles with 2 or more adjudications for sexual offenses are open to public. Juvenile's names and addresses are open to public if juvenile has 2 adjudications for felony equivalent offenses and/or at least 1 adjudication of certain felonies. Victim is entitled to know the disposition in juvenile cases.</p>
Missouri	<p>* Victims are entitled to attend any proceeding the juvenile has a right to attend.</p> <p>* Juvenile officers may discuss matters concerning the juvenile, the offense, the case with the victim (and witnesses). Juvenile officers may give information to the victim (and witnesses) about the juvenile, the offense, the case. If a juvenile is adjudicated of a felony equivalent offense, records of dispositional hearings and related proceedings are open to the public to the same extent adult criminal records are open.</p>
Montana	<p>** Petitions, motions, court findings, verdicts, orders, and decrees on file with the court clerk are public records. Victim is entitled to all information concerning the juvenile's identity and disposition.</p>
Nebraska	
Nevada	<p>* State Constitution provides access to criminal proceedings as a right for victims.</p> <p>** Juvenile's name and the nature of the alleged offense(s) may be released to the public and broadcast if juvenile has been adjudicated of a felony equivalent offense and that offense resulted in death or serious bodily injury, or if the juvenile has 2 prior felony equivalent adjudications, or if the juvenile is adjudicated a serious or chronic offender. Juvenile's name may be released for the purpose of a civil action arising out of the juvenile's conduct.</p>
New Hampshire	<p>* Victim may appear and give written impact statement prior to any plea and at dispositional hearing.</p> <p>** When the juvenile is charged with a violent offense, the victim is entitled, on request, to the juvenile's name, age, address, and custody status. The prosecutor may discuss disposition and plea bargaining with that victim. That victim is entitled to information about any release (even if temporary) of the juvenile or any change in placement. Before the juvenile court's jurisdiction terminates, that victim is entitled to information about the juveniles intended place of residence. With written approval of the prosecutor, law enforcement may release the name of the juvenile and a photograph if the juvenile escapes from court-ordered detention and if there is reason to believe that the juvenile poses a risk to public safety or to him or herself. Juvenile may give written permission allowing access to records.</p>
New Jersey	<p>* Open to victims. On request of juvenile, prosecutor, the victim, or the media, the court may open up to public.</p> <p>** Victims have access to court and law enforcement records for civil suits. On request, victim shall have juvenile's name, charge (at the time of the charge), adjudication and disposition information. The juvenile's name, charge, adjudication and disposition information is public for juveniles adjudicated of certain felonies.</p>
New Mexico	<p>* All hearings on juvenile petitions are open to public unless court, upon findings of exceptional circumstances, determines that they should be closed.</p>
New York	<p>** Court records may be inspected at court's discretion.</p>
North Carolina	<p>** All records are confidential except that, with the parent's permission, juvenile runaway's photo may be released to public.</p>

Title III: Juvenile Confidentiality Act of 2003

Comparison of State Confidentiality Provisions: Are Proceedings & Records Generally Open to the Public

(based on information from the National Center for Juvenile Justice, the U.S. Department of Justice: OJJDP, and a Review of Selected State Statutes and Constitutions—current through 2003)

North Dakota	<p>* Proceedings to consider a petition for certain offenses are open. When a proceeding is closed, the court may allow the victim to be present.</p> <p>** All records are confidential except that identification information may be released to public to assist in apprehending a juvenile.</p>
Ohio	<p>* Proceedings open to public unless, after holding a hearing on the issue, the court finds that closing the proceeding is appropriate. Such a finding does not limit the victim's right to attend.</p> <p>** Victims of sexual offenses shall be informed if the juvenile has a communicable disease and the nature of that disease.</p>
Oklahoma	<p>* Juvenile hearings are open to the victim. Hearings for what may be a juvenile's second or any subsequent adjudication are open to the public. Court may exclude the public for certain testimony.</p> <p>** Court and law enforcement records are closed except: (1) judge may release if finds there is a legitimate public or private interest (2) they are not confidential (and are presumably open to public) if juvenile is 14 or older and committed a felony equivalent with a weapon OR has prior adjudication of 2 or more delinquent acts. Identification information may be made public if juvenile is an escapee.</p>
Oregon	<p>* Victim has the right to be present at open court proceedings where the juvenile is to be present.</p> <p>** Not confidential and not exempt from disclosure: juvenile offender's name, DOB, date/time/place of proceedings, dispositions, offense alleged, names and addresses of juvenile's parents; if taken into custody under certain statute info about whether the juvenile resisted being taken into custody, and whether pursuit or weapon had to be used to take juvenile into custody shall be disclosed. Social file records are generally confidential except that it shall be released to anyone who may be in danger from the juvenile.</p>
Pennsylvania	<p>* Open to victim. Open to public where juvenile is 14 or older. Open to public where juvenile is 12 or older if juvenile is charged with certain felonies. Juvenile and prosecutor may enter an agreement limiting access to the proceedings.</p> <p>** Law enforcement records may not be disclosed to public unless juvenile was 14 or older at time of offense and has (1) an adjudication for certain firearm offenses, or (2) petition alleges certain firearm offense(s) and juvenile has a prior adjudication for an related to certain firearm offenses.</p>
Rhode Island	<p>** Victim may petition court for juvenile's name and address and the names and address of parents for the purpose of pursuing a civil suit.</p>
South Carolina	<p>** On request, victim shall get juvenile's name, descriptive information, including photograph, status and disposition action including hearing dates, times and location. Name, identity or picture of juvenile not to be given to media unless juvenile adjudicated for certain violent crimes, motor vehicle theft, certain weapons offenses, distribution.</p>
South Dakota	<p>* The victim may attend all hearings.</p>
Tennessee	<p>** Law enforcement records, petitions and court orders in juvenile proceedings are open to public if juvenile is 14 or older at time of offense and offense is certain type of felony (e.g. murder, rape, aggravated robbery, kidnapping).</p>
Texas	<p>** Court records may be open to inspection, with leave of the court, to anyone with a legitimate interest in the case. Court will release identification information to public if juvenile is wanted (escapee/warrant).</p>
Utah	<p>** Victim has right to know if juvenile is seeking to expunge a record and can testify at that hearing. Court records are open (unless judge denies for good cause shown) to anyone who files a petition to inspect and the juvenile is 14 or older at time of offense.</p>
Vermont	<p>** On request, victim may get juvenile's name if the juvenile is adjudicated of an offense that would be an adult felony.</p>
Virginia	<p>* Open to public if juvenile is 14 or older and is alleged to have committed an offense that would be an adult felony (unless closed by judge on juvenile's motion). All juvenile proceedings are open to victim (court may exclude where victim is being called as witness)</p> <p>** Victim of any felony has the right to know charges, disposition and court findings. Records are open to public if juvenile is 14 or older and is alleged to have committed a felony. Records may be open to interested party by court order. Court shall release identification information to public if offense is dangerous felony and if public interest requires. On court order, identification information may be released to public to assist in apprehending a juvenile escapee or fugitive.</p>
Washington	<p>** Official court juvenile file is open to public. On victim's request, the juvenile's name, the name of his or her parents, and the circumstances of the crime will be released to the victim. A person who believes that information about them is in the juvenile justice file and who has been denied access to the file may file a motion with the court to get access to the information. The court will grant the request unless it is not in the best interest of the child. Victims of sexual offenses and violent offenses are entitled, on request, to know about release and transfer of juvenile.</p>

Title III: Juvenile Confidentiality Act of 2003

Comparison of State Confidentiality Provisions: Are Proceedings & Records Generally Open to the Public

(based on information from the National Center for Juvenile Justice, the U.S. Department of Justice: OJJDP, and a Review of Selected State Statutes and Constitutions—current through 2003)

West Virginia	** Juvenile record is subject to public inspection pending trial where juvenile is charged with committing certain offense(s) , and there has been a finding of probable cause, and the juvenile has not been transferred to an adult court, and the juvenile is released. The name and identity of any juvenile adjudicated of a violent or felonious crime will be made available to the public.
Wisconsin	* Victim may attend juvenile proceedings. Hearings will be open to public if juvenile is alleged to have committed a felony equivalent and the juvenile has a prior adjudication. ** Law enforcement and court records are closed unless person denied petitions the court. If the juvenile objects to opening the record, the court will hold a hearing.
Wyoming	** Records of juvenile proceedings where juvenile is adjudicated of a violent felony are open to the public. Victim may inspect juvenile records. Court may release records, including juvenile's name, to media where safety is a concern and where court believes it would deter other juvenile offenders.

Title IV: Violent Juvenile Offender Transfer Act – Exhibit A

Overview: Comparison of Juvenile Transfer Provisions, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Judicial Waiver			Direct File	Statutory Exclusion	Reverse Waiver
	Discretionary	Mandatory	Presumptive			
Total States:	46	14	14	16	28	23
Alabama	<input type="checkbox"/>				<input type="checkbox"/>	
Alaska	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
Arizona	<input type="checkbox"/>		<input type="checkbox"/> *	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arkansas	<input type="checkbox"/>			<input type="checkbox"/>		<input type="checkbox"/>
California	<input type="checkbox"/>		<input type="checkbox"/>			
Colorado	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Connecticut		<input type="checkbox"/>				<input type="checkbox"/>
Delaware	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Dist. of Columbia	<input type="checkbox"/>			<input type="checkbox"/>		
Florida	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	
Georgia	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hawaii	<input type="checkbox"/>				(repealed 1997)	
Idaho	<input type="checkbox"/>				<input type="checkbox"/>	
Illinois	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
Indiana	<input type="checkbox"/>				<input type="checkbox"/>	
Iowa	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>
Kansas	<input type="checkbox"/>		<input type="checkbox"/>		(repealed 1996)	
Kentucky	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/>
Louisiana	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
Maine	<input type="checkbox"/>					
Maryland	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>
Massachusetts	(repealed 1996)			<input type="checkbox"/>	<input type="checkbox"/>	
Michigan	<input type="checkbox"/>			<input type="checkbox"/>		
Minnesota	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
Mississippi	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>
Missouri	<input type="checkbox"/>					
Montana	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	
Nebraska				<input type="checkbox"/>		<input type="checkbox"/>
Nevada	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
New Hampshire	<input type="checkbox"/>		<input type="checkbox"/>			
New Jersey	<input type="checkbox"/>		<input type="checkbox"/>			
New Mexico						
New York						<input type="checkbox"/>
North Carolina	<input type="checkbox"/>	<input type="checkbox"/>				
North Dakota	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
Ohio	<input type="checkbox"/>	<input type="checkbox"/>				
Oklahoma	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>
Oregon	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>
Pennsylvania	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Rhode Island	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
South Carolina	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
South Dakota	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>
Tennessee	<input type="checkbox"/>					<input type="checkbox"/>
Texas	<input type="checkbox"/>					
Utah	<input type="checkbox"/>		<input type="checkbox"/>			
Vermont	<input type="checkbox"/>			<input type="checkbox"/>		<input type="checkbox"/>
Virginia	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Washington	<input type="checkbox"/>				<input type="checkbox"/>	
West Virginia	<input type="checkbox"/>	<input type="checkbox"/>				
Wisconsin	<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>
Wyoming	<input type="checkbox"/>					<input type="checkbox"/>

☐ indicates the provision(s) allowed by each State as of the end of the 1997 legislative session; * = by court rule.

Title IV: Violent Juvenile Offender Transfer Act – Exhibit A

Comparison of Discretionary Waiver Provisions, 1997

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama	14							
Alaska	NS							
Arizona		NS						
Arkansas		14/16	14	14	14			14
California	16			14	14	14	14	
Colorado		12/14		12	12			
Delaware	NS/14							
District of Columbia		15		15				
Florida	14							
Georgia	15		13					
Hawaii		14/16		NS				
Idaho	14	NS		NS	NS	NS	NS	
Illinois	13							
Indiana	14	16		10/16			16	
Iowa	14/15							
Kansas	10							
Kentucky		14/16	14					
Louisiana				14	14			
Maine		NS		NS				
Maryland	15		NS					
Michigan	14							
Minnesota		14						
Mississippi	13							
Missouri		12						
Montana								
Nevada								
New Hampshire		14						
New Jersey	14	15		13	13			
New York				14	14	14		14
North Carolina		13						
North Dakota	16				14			
Ohio		14						
Oklahoma		NS						
Oregon		15		NS	NS/15	15		
Pennsylvania		14						
Rhode Island		16	NS					
South Carolina	16	14		NS	NS/14		14	14
South Dakota		NS						
Tennessee	16			NS	NS			
Texas		14/15	14				14	
Utah		14						
Vermont				10	10	10		
Virginia		14						
Washington	NS							
West Virginia		NS/14		NS	NS	NS	NS	
Wisconsin	15	14		14	14	14	14	
Wyoming	13							

Note: "NS" indicates "none specified." (Table adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

Title IV: Violent Juvenile Offender Transfer Act – Exhibit A

Comparison of Mandatory Waiver Provisions: Minimum Age and Offense Criteria, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Connecticut		14	14	14				
Delaware		15		NS	NS/16	16	16	
Georgia				14	14	15		
Illinois		15						
Indiana		NS						
Kentucky		14						
Louisiana				15	15			
North Carolina			13					
North Dakota				14	14		14	
Ohio	14			14/16	16	16		
Rhode Island				17	17			
South Carolina		14						
Virginia				14	14			
West Virginia		14		14	14	14		

Note: "NS" indicates "none specified."

A mandatory waiver statute requires the juvenile court judge, after finding probable cause, to waive jurisdiction to criminal court.

Title IV: Violent Juvenile Offender Transfer Act – Exhibit A

Presumptive Waiver: Minimum Age and Offense Criteria, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alaska					NS			
Arizona		16						
California		16		14/16	16	16	16	
District of Columbia		15*		15*				
Illinois		15						
Kansas		14			14		14	14
Minnesota		16						
Nevada					14			14
New Hampshire		15		15	15		15	
New Jersey				14	14	14	14	
North Dakota		14		14	14			
Pennsylvania		14		15	15			
Rhode Island								
Utah		16		16	16	16		16

Note: "NS" indicates "none specified."

* Case law interpreting the D.C. presumptive waiver provision has held that the burden of proof remains upon the government.

Direct File: Minimum Age and Offense Criteria, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Arizona		14						
Arkansas		14/16	14	14	14			14
Colorado		14/16		14	14	14		14
District of Columbia		16		16				
Florida	16	16	NS	14	14	14		14
Georgia			NS					
Louisiana				15	15	15	15	
Massachusetts		14			14			14
Michigan		14		14	14	14	14	
Montana				12/16	12/16	16	16	16
Nebraska	16	NS						
Oklahoma				15	15/16	15/16	16	15
Vermont	16							
Virginia				14	14			
Wyoming	17	14						

Note: "NS" indicates "none specified."

Title IV: Violent Juvenile Offender Transfer Act – Exhibit A

Statutory Exclusion: Minimum Age and Offense Criteria, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama		16	16				16	
Alaska					16	16		
Arizona		15		15	15			
Delaware		15						
Florida	NS				NS/16			
Georgia				13	13			
Idaho				14	14	14	14	
Illinois		15		13/15	15		15	15
Indiana		16		16	16		16	16
Iowa		16					16	16
Louisiana				15	15			
Maryland			14	16	16			16
Massachusetts				14				
Minnesota				16				
Mississippi		13/17	13					
Montana				17	17	17	17	17
Nevada	NS			NS	16			16
New Mexico				15				
New York				13/14	14	14		
Oklahoma				13				
Oregon				15	15			
Pennsylvania				NS/15	15			
South Carolina		16						
South Dakota		16						
Utah		16		16				
Vermont				14	14	14		
Washington				16	16	16		
Wisconsin				10	NS			

Note: "NS" indicates "none specified."

Twenty-eight States have statutes that remove certain offenses or age/offense/prior record categories from the juvenile court's jurisdiction. Generally, the laws of such States simply exclude anyone fitting into one of these categories from being defined as a "child" for juvenile court jurisdictional purposes. A juvenile accused of an excluded offense is treated as an adult from the beginning—that is, proceeded against (by information, indictment, or otherwise) in the criminal court that would have had jurisdiction over the same offense if it had been committed by an adult. This way of proceeding is not merely an option available

Some States exclude only the most serious offenses; in New Mexico, for example, only first-degree murder committed by a child of at least 15 is excluded. Others single out cases involving older juveniles. Mississippi excludes all felonies committed by 17-year-olds. It should be noted that one blanket application of this method—simply lowering the upper age limit of original) juvenile court jurisdiction—excludes the largest number of juveniles for adult prosecution. Finally, as is the case with the presumptive and mandatory waiver provisions previously discussed, some States focus not so much on offense or age as on the individual juvenile's offense history. Arizona excludes any felony committed by a juvenile as young as 15, provided the juvenile has two or more previous delinquency adjudications for offenses that would have been felonies if committed by an adult.

Title IV: Violent Juvenile Offender Transfer Act – Exhibit A

Minimum Age and Offenses for Which a Juvenile Can Be Transferred to Criminal Court in Every State, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Minimum Transfer Age	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
						Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama	14	14	16	16				16	
Alaska	NS	NS				NS	16		
Arizona	NS		NS		15	15			
Arkansas	14		14	14	14	14			14
California	14	16	16		14	14	14	14	
Colorado	12		12		12	12	14		14
Connecticut	14		14	14	14				
Delaware	NS	NS/14	15		NS	NS	16	16	
District of Columbia	15		15						
Florida	NS	NS		NS	14	NS	14		14
Georgia	NS	15		NS	13	13	15		
Hawaii	NS		14		NS				
Idaho	NS	14	NS		NS	NS	NS	NS	
Illinois	13	13	15		13*	15		15	15
Indiana	NS	14	NS		10*	16		16	16
Iowa	14	14	16					16	16
Kansas	10	10	14			14		14	14
Kentucky	14		14	14					
Louisiana	14				14	14	15	15	
Maine	NS		NS		NS				
Maryland	NS	15		NS	16	16			16
Massachusetts	14		14		14	14			14
Michigan	14	14	14		14	14	14	14	
Minnesota	14		14		16				
Mississippi	13	13	13	13					
Missouri	12		12						
Montana	12				12	12	16	16	16
Nebraska	NS	16	NS						
Nevada	NS	NS	14		NS	14			14
New Hampshire	13		15		13	13		15	
New Jersey	14	14			14	14	14	14	14
New Mexico	15				15				
New York	13				13	14	14		
North Carolina	13		13	13					
North Dakota	14	16	14		14	14		14	
Ohio	14	14	14		14	16	16		
Oklahoma	NS		NS		13	15	15	16	15
Oregon	NS		15		NS	NS	15		
Pennsylvania	NS		14		NS	15			
Rhode Island	NS		16	NS	17	17			
South Carolina	NS	16	14		NS	NS		14	14
South Dakota	NS		NS						
Tennessee	NS	16			NS	NS			
Texas	14			14				14	
Utah	14		14		16	16	16		16
Vermont	10	16			10	10	10		
Virginia	14		14		14	14			
Washington	NS	NS			16	16	16		
West Virginia	NS		NS		NS	NS	NS	NS	
Wisconsin	NS	15	14		10	NS	14	14	
Wyoming	13	13	14						

Note: "NS" indicates "none specified."

Testimony of Robert J. Spagnoletti
January 16, 2004

Title V: Corporation Counsel Subpoena Authority Act of 2003 - Exhibit A
Partial Survey Of States That Grant Investigatory Subpoena Power

A number of jurisdictions have granted prosecutors investigatory subpoena power. The following states have been identified as having a statute or court rule that permits prosecutors to subpoena witnesses and/or records for criminal investigatory purposes¹:

Alabama – At any time that the grand jury is not in session the district attorney has power to issue subpoenas for any witnesses to come before him or her to be examined under oath as to any law violations. See Alabama Criminal Rule 17.1.

Arkansas – Special deputy prosecutor has power to issue investigatory subpoenas and take oath in child support enforcement actions and subpoena records when investigating the criminal use of property and/or laundering of criminal proceeds. See Arkansas Code Ann. §§ 5-28-108, 5-42-205, and 9-14-210.

Florida – The State's Attorneys have investigatory subpoena powers. The courts have called a State Attorney Investigation "one man grand juries." See Florida Statute § 27.04.

Hawaii – Provides that the attorney general and county prosecuting attorneys may subpoena witnesses and examine them under oath. It also authorizes them to subpoena records. See HRS § 28-2.5.

Iowa – The prosecutor, after approval of court, can subpoenas witnesses and documents. The prosecutor can administer oaths. See Iowa Rules of Criminal Procedure – Rule 2.5 (6).

Maryland – The State's Attorney has limited authority to subpoenas documents in furtherance of a criminal investigation. See Maryland Ann. Code Art. 10, § 39A.

Michigan – The prosecutor, after approval of court, can subpoenas witnesses and documents in felony matters. The prosecutor can administer oaths. See Michigan Code §§ 767A.2, et. seq.

Missouri - The prosecutor, after submitting a form to the court, can subpoenas witnesses and documents in furtherance of an investigation. The prosecutor can examine the witnesses under oath. See Missouri Code § 56.085

Montana - The prosecutor, after approval of court, can subpoenas witnesses and documents. The prosecutor can take testimony under oath. See Montana Code § 46-4-301, et. seq.

¹ Connecticut is considering whether to grant investigative subpoena power. Last Spring an investigative subpoena bill passed the Connecticut State Senate.

North Dakota – In felony matters, after approval of court, the prosecutor can subpoena witnesses and take testimony under oath. See North Dakota Code § 11-16-15.

Puerto Rico - The prosecutor can subpoena witnesses and documents. The prosecutor can take testimony under oath. See 3 Laws of Puerto Rico Ann. § 138f.

Utah - The prosecutor, after approval of court, can subpoenas witnesses and documents. The prosecutor can take testimony under oath. See Utah Code Ann. § 77-22-1, et. seq.

Title V: Corporation Counsel Subpoena Authority Act of 2003 - Exhibit B
Corporation Counsel Charges Against Adults
That Carry A Penalty In Excess of 30 Days

The following is a list of the most frequent charges brought by the Office of the Corporation Counsel against adults that carry penalties greater than 30 days¹:

Charge	Cite (D.C. Official Code or DCMR)	Penalty
1. Disorderly Conduct (Loud and Boisterous)	22-1321	90 days &/or \$250
2. Drinking in Public	25-1001	90 days &/or \$500
3. Driving Under the Influence	50-2201.05(b)(1)	90 days &/or \$300
4. Driving While Intoxicated	50-2201.05(b)(1)	90 days &/or \$300
5. Disorderly Conduct (Incommoding)	22-1307	90 days &/or \$250
6. Indecent Exposure – Adult	22-1312(a)	90 days &/or \$300
7. Indecent Exposure – Minor	22-1312(b)	1 yr. &/or \$1,000
8. Indecent Proposal – Adult	22-1312(a)	90 days &/or \$300
9. Indecent Proposal – Minor	22-1312(b)	1 yr. &/or \$1,000
10. Leaving After Colliding – Personal Injury	50-2201.05(a)(2)	180 days &/or \$500
11. Misrepresentation of Age to Enter ABC Establishment	25-1002/25-831	1yr. &/or \$1,000
12. No Permit	50-1401.01(d)	90 days or \$300
13. Operating a Vehicle after Suspension/ Operating after Revocation	50-1403.01	1 yr. &/or \$5,000
15. Panhandling - Aggressive	22-2302/22-2304	90 days &/or \$300
16. Parental Kidnapping (Felony)	16-1022/16-1024	1yr. &/or \$5,000
Parental Kidnapping (Misdemeanor)		60 days &/or \$500
(If released w/o injury prior to arrest)		
17. Disorderly Conduct (Peeping Tom)	22-1321	90 days &/or \$250
18. Possession of Open Container of Alcohol	25-1001	90 days &/or \$500
19. Reckless Driving	50-2201.04	90 days &/or \$250
20. Selling Alcohol to a Minor	23-903/25-831	1yr. &/or \$1,000
21. Speeding in Excess of 30 Over the Limit	18-22-2200.12	90 days or \$300
22. Underage Possession of Alcohol	25-1002/25-831	1yr. &/or \$1,000

¹ Bolded charges are specifically mentioned in written testimony.

Title V: Corporation Counsel Subpoena Authority Act of 2003 - Exhibit B
Corporation Counsel Charges Against Adults
That Carry A Penalty In Excess of 30 Days

23. Unregistered Ammunition	7-2506.01/7-2507.06	1yr. &/or \$1,000
24. Unregistered Firearm	7-2502.01/7-2507.06	1yr. &/or \$1,000
25. Urination in Public	22-1321	90 days &/or \$250
26. Vending in Unauthorized Location	24-501	90 days &/or \$300
27. Vending Without a License	47-2834/47-2846	90 days &/or \$300
28. Welfare Fraud	4-218.01	1yr. &/or \$500

Title VI: Juvenile Disposition Act of 2003 - Exhibit A
Overview of Delinquency Cases: 1997-2003

	2003 ¹	2002	2001	2000	1999	1998	1997
Overview of the Delinquency Cases Presented to the Office of the Corporation Counsel							
Number of Delinquency Arrests Referred to OCC (excludes PINS and fugitive-extradition charges)		2756	3115	3186	3589	4014	4215
Number of Delinquency Cases Petitioned by OCC (includes consent decrees) (excludes PINS and fugitive charges)		2102	2273	2382	2598	2940	3247
Overview of the Nature of the Offenses Petitioned							
Number of Delinquency Petitions Where Lead Charge Was Crime Against a Person/Overall Percentage of Delinquency Cases Petitioned		664/32%	675/30%	676/28%	719/28%	893/30%	1075/33%
Number of Delinquency Petitions Where Lead Charge Was Crime Against Property/Overall Percentage of Delinquency Cases Petitioned		742/35%	803/35%	766/32%	798/31%	864/30%	992/31%
Number of Delinquency Petitions Where Lead Charge Was Crime Against Public Order (includes drug offenses and weapons offenses that did not involve a crime against a person or property)/Overall Percentage of Delinquency Cases Petitioned		696/33%	795/35%	940/40%	1081/41%	1183/40%	1180/36%

Title VI: Juvenile Disposition Act of 2003 - Exhibit A
Overview of Delinquency Cases: 1997-2003

Non-Violent Youth Who Entered into a Diversionary-Type Program in Lieu of an Adjudication									
Number of Petitioned Youth Who Entered into Consent Decree	245	234	256	295	348	244	267		
Number of Petitioned Youth Who Entered into Drug Court	23	9	n/a	n/a	n/a	n/a	n/a		
Number of Youth Diverted by OCC for Mediation in lieu of Arrest*	9	8	n/a	n/a	n/a	n/a	n/a		
Number of Youth Diverted through Consultation Between OCC and CSS after Arrest for a Delinquency Charge ("no papered" for diversion cases)	est. 50	est. 60	est. 50	not available	not available	not available	not available		
Number of Youth Diverted by Police	355	307	285	312	310	400	388		
Total Youth Placed in Diversion or Other Non-Adjudication Programs	682	618	591	607+	658+	644+	655+		
Cases Dismissed by the Court Under Juvenile Rule 48(b) (for "Social Reasons")									
Number of cases dismissed under Rule 48(b) prior to a trial or entry of a plea by offender	22	34	22	41	31	46	85		
Number of cases dismissed under Rule 48(b) after a finding of guilt by trial or plea		56	53	data not available	data not available	data not available	data not available		
Total Number of Cases Dismissed by the Court Pursuant to Rule 48(b)		90	75	at least 41	at least 31	at least 46	at least 85		
* This represents only a small portion of the total youth referred to the OCC Mediation Program. In 2002, OCC began referring eligible first time non-violent offenders the option of participating in mediation before arrest. Upon successful completion of mediation, OCC and MPD agreed that the case would be closed without an arrest. A large number of youth, however, are also referred to the OCC Mediation program at other stages. Thus, youth who participate in mediation may be referred pre-arrest by OCC and the police, post-arrest by OCC and Court Social Services as a condition of diversion or as a condition of a consent decree, or by the Court or YSA, post-adjudication, as a condition of probation or commitment. Since its inception in 2000, the total number of youth referred to the OCC Mediation program is 81.									

Crime Victims' Rights in America An Historical Overview

"The future is not a result of choices among alternative paths offered by the present, but a place that is created – created first in mind and will, created next in activity. The future is not some place we are going to, but one we are creating. The paths are not to be found, but made, and the activity of making them changes both the maker and the destination." John Schaar

1965

- The first crime victim compensation program is established in California.

• By 1970, five additional compensation programs are created – New York, Hawaii, Massachusetts, Maryland, and the Virgin Islands.

1972

- The first three victim assistance programs are created:
 - Aid for Victims of Crime in St. Louis, Missouri.
 - Bay Area Women Against Rape in San Francisco, California.
 - Rape Crisis Center in Washington, DC.

1974

- The Federal Law Enforcement Assistance Administration (LEAA) funds the first victim/witness programs in the Brooklyn and Milwaukee District Attorneys' offices, plus seven others through a grant to the National District Attorneys Association, to create model programs of assistance for victims, encourage victim cooperation, and improve prosecution.
- The first law enforcement-based victim assistance programs are established in Fort Lauderdale, Florida and Indianapolis, Indiana.
- The U.S. Congress passes the Child Abuse Prevention and Treatment Act, which establishes the National Center on Child Abuse and Neglect (NCCAN). The new Center creates an information clearinghouse, and provides technical assistance and model programs.

1975

- The first "Victims' Rights Week" is organized by the Philadelphia District Attorney.

• Citizen activists from across the country unite to expand victim services and increase recognition of victims' rights through the formation of the National Organization for Victim Assistance (NOVA).

1976

- The National Organization for Women forms a task force to examine the problem of battering. It requests research into the problem, along with money for battered women's shelters.
- Nebraska becomes the first state to abolish the marital rape exemption.
- The first national conference on battered women is sponsored by the Milwaukee Task Force on Women in Milwaukee, Wisconsin.
- In Fresno County, California, Chief Probation Officer James Rowland creates the first victim impact statement to provide the judiciary with an objective inventory of victim injuries and losses prior to sentencing.
- Women's Advocates in St. Paul, Minnesota starts the first hotline for battered women. Women's Advocates and Haven House in Pasadena, California establishes the first shelters for battered women.

1977

- The National Association of Crime Victim Compensation Boards is established by the existing 22 compensation programs to promote

the creation of a nationwide network of compensation programs.

- Oregon becomes the first state to enact mandatory arrest in domestic violence cases.

1978

- The National Coalition Against Sexual Assault (NCASA) is formed to combat sexual violence and promote services for rape victims.
- The National Coalition Against Domestic Violence (NCADV) is organized as a voice for the battered women's movement on a national level. NCADV initiates the introduction of the Family Violence Prevention and Services Act in the U.S. Congress.
- Parents of Murdered Children (POMC), a self-help support group, is founded in Cincinnati, Ohio.
- Minnesota becomes the first state to allow probable cause (warrantless) arrest in cases of domestic assault, regardless of whether a protection order had been issued.

1979

- Frank G. Carrington, considered by many to be "the father of the victims' rights movement," founds the Crime Victims' Legal Advocacy Institute, Inc., to promote the rights of crime victims in the civil and criminal justice systems. The nonprofit organization was renamed VALOR, the Victims' Assistance Legal Organization, in 1981.
- The Office on Domestic Violence is established in the U.S. Department of Health and Human Services, but is later closed in 1981.
- The U.S. Congress fails to enact the Federal Law Enforcement Assistance Administration (LEAA) and federal funding for victims' programs is phased out. Many grassroots and "system-based" programs close.

1980

- Mothers Against Drunk Driving (MADD) is founded after the death of 13-year-old Carl Lightner, who was killed by a repeat offender

drunk driver. The first two MADD chapters are created in Sacramento, California and Annapolis, Maryland.

- The U.S. Congress passes the Parental Kidnapping Prevention Act of 1980.
- Wisconsin passes the first "Crime Victims' Bill of Rights."
- The First National Day of Unity in October is established by NCADV to mourn battered women who have died, celebrate women who have survived the violence, and honor all who have worked to defeat domestic violence. This Day becomes Domestic Violence Awareness Week and, in 1987, expands to a month of awareness activities each October.
- NCADV holds its first national conference in Washington, D.C., which gains federal recognition of critical issues facing battered women, and sees the birth of several state coalitions.
- The first Victim Impact Panel is sponsored by Remove Intoxicated Drivers (RID) in Oswego County, New York.

1981

- Ronald Reagan becomes the first President to proclaim "Crime Victims' Rights Week" in April.
- The disappearance and murder of missing child Adam Walsh prompts a national campaign to raise public awareness about child abduction and enact laws to better protect children.
- The Attorney General's Task Force on Violent Crime recommends that a separate Task Force be created to consider victims' issues.

1982

- In a Rose Garden ceremony, President Reagan appoints the Task Force on Victims of Crime, which holds public hearings in six cities across the nation to create a greatly needed national focus on the needs of crime victims. The Task Force Final Report offers 68 recommendations that become the framework for the advancement of new programs and policies. Its final recommendation, to amend

the Sixth Amendment of the U.S. Constitution to guarantee that "...the victim, in every criminal prosecution, shall have the right to be present and to be heard at all critical stages of judicial proceedings....," becomes a vital source of new energy pushing toward the successful efforts to secure state constitutional amendments through the 1980s and beyond.

- The Federal Victim and Witness Protection Act of 1982 brings "fair treatment standards" to victims and witnesses in the federal criminal justice system.

- California voters overwhelmingly pass Proposition 8, which guarantees restitution and other statutory reforms to crime victims.

- The passage of the Missing Children's Act of 1982 helps parents guarantee that identifying information about their missing child is promptly entered into the FBI National Crime Information Center (NCIC) computer system.

1983

- The Office for Victims of Crime (OVC) is created by the U.S. Department of Justice within the Office of Justice Programs to implement recommendations from the President's Task Force on Victims of Crime. OVC establishes a national resource center, trains professionals, and develops model legislation to protect victims' rights.

- The U.S. Attorney General establishes a Task Force on Family Violence, which holds six public hearings across the United States.
- The U.S. Attorney General issues guidelines for federal victim and witness assistance.

- In April, President Reagan honors crime victims in a White House Rose Garden ceremony.

- The First National Conference of the Judiciary on Victims of Crime is held at the National Judicial College in Reno, Nevada, with support from the National Institute of Justice. Conferees develop recommendations for the judiciary on victims' rights and services.

- President Reagan proclaims the first National Missing Children's Day in observance of the disappearance of missing child Etan Patz.

- Wisconsin passes the first "Child Victim and Witness Bill of Rights."

- The International Association of Chiefs of Police Board of Governors adopts a Crime Victims' Bill of Rights and establishes a victims' rights committee to bring about renewed emphasis on the needs of crime victims by law enforcement officials nationwide.

1984

- The passage of the Victims of Crime Act (VOCA) establishes the Crime Victims Fund, made up of federal criminal fines, penalties and bond forfeitures, to support state victim compensation and local victim service programs.

- President Reagan signs the Justice Assistance Act, which establishes a financial assistance program for state and local government and funds 200 new victim service programs.

- The National Minimum Drinking Age Act of 1984 is enacted, providing strong incentives to states without "21" laws to raise the minimum age for drinking, saving thousands of young lives in years to come.

- The first of several international affiliates of MADD is chartered in Canada.

- The National Center for Missing and Exploited Children (NCMEC) is created as the national resource agency for missing children. Passage of the Missing Children's Assistance Act provides a Congressional mandate for the Center.

- The Spiritual Dimension in Victim Services is founded to involve the faith community in violence prevention and victim assistance.

- Crime Prevention Week in February is marked by a White House ceremony with McGruff, the crime-fighting mascot of the National Crime Prevention Council.

- The Task Force on Family Violence presents its report to the U.S. Attorney General with recommendations for action, including the criminal justice system's response to battered women; prevention and awareness; education and training; and data collection and reporting.

- The U.S. Congress passes the Family Violence Prevention and Services Act, which earmarks federal funding for programs serving victims of domestic violence.

- The ad-hoc committee on the constitutional amendment formalizes its plans to secure passage of amendments at the state level.

- Concerns of Police Survivors (COPS) is organized at the first police survivors' seminar held in Washington, D.C. by 110 relatives of officers killed in the line of duty.

- The first National Symposium on Sexual Assault is co-sponsored by the Office of Justice Programs and the Federal Bureau of Investigation, highlighting on the federal level the important needs of victims of rape and sexual assault.

- A victim/witness notification system is established within the Federal Bureau of Prisons.

- The Office for Victims of Crime hosts the first national symposium on child molestation.

- Victim/witness coordinator positions are established in the U.S. Attorneys' offices within the U.S. Department of Justice.

- California State University, Fresno initiates the first Victim Services Certificate Program offered for academic credit by a university.

- OVC establishes the National Victims Resource Center, now named the Office for Victims of Crime Resource Center (OVCRC), to serve as a clearinghouse for OVC publications and other resource information.

1985

- The Federal Crime Victims Fund deposits total \$68 million.

- The National Victim Center (renamed the National Center for Victims of Crime in 1998) is founded in honor of Sunny von Bulow to promote the rights and needs of crime victims, and to educate Americans about the devastating effect of crime on our society.

- The National Institute of Mental Health and NOVA sponsor a services, research and evaluation colloquium on the "Aftermath of Crime: A Mental Health Crisis."

- The United Nations General Assembly passes the International Declaration on the Rights of Victims of Crime and the Abuse of Power.

- President Reagan announces a Child Safety Partnership with 26 members. Its mission is to enhance private sector efforts to promote child safety, to clarify information about child victimization, and to increase public awareness of child abuse.

- The U.S. Surgeon General issues a report identifying domestic violence as a major public health problem.

1986

- The Federal Crime Victims Fund deposits total \$62 million.

- The Office for Victims of Crime awards the first grants to support state victim compensation and assistance programs.

- Two years after its passage, the Victims of Crime Act is amended by the Children's Justice Act to provide funds specifically for the investigation and prosecution of child abuse.

- Over 100 constitutional amendment supporters meet in Washington, D.C. at a forum sponsored by NOVA to refine a national plan to secure state constitutional amendments for victims of crime.

- Rhode Island passes a constitutional amendment granting victims the right to restitution, to submit victim impact statements, and to be treated with dignity and respect.

- Victim compensation programs have been established in 35 states.

- MADD's "Red Ribbon Campaign" enlists motorists to display a red ribbon on their automobiles, pledging to drive safe and sober during the holidays. This national public awareness effort has since become an annual campaign.

1987

- The Federal Crime Victims Fund deposits total \$77 million.
- The National Victims' Constitutional Amendment Network (NVCAN) and Steering Committee are formed at a meeting hosted by the National Victim Center.
- Security on Campus, Inc. (SOC) is established by Howard and Connie Clery, following the tragic robbery, rape and murder of their daughter Jeanne at Lehigh University in Pennsylvania. SOC raises national awareness about crime and victimization on our nation's campuses.
- The American Correctional Association establishes a Task Force on Victims of Crime.
- NCADV establishes the first national toll-free domestic violence hotline.
- National Domestic Violence Awareness Month is officially designated to commemorate battered women and those who serve them.
- In a 5-4 decision, the U.S. Supreme Court rules in *Booth v. Maryland* (482 U.S. 496) that victim impact statements are unconstitutional (in violation of the Eighth Amendment) when applied to the penalty phase of a capital trial as "only the defendant's personal responsibility and moral guilt" may be considered in capital sentencing. However, significant dissenting opinions are offered.
- Victims and advocates in Florida, frustrated by five years of inaction on a proposed constitutional amendment by their legislature, begin a petition drive. Thousands of citizens sign petitions supporting constitutional protection for victims' rights. The Florida legislature reconsiders, and the constitutional amendment appears on the 1988 ballot.

1988

- The Federal Crime Victims Fund deposits total \$93 million.
- OVC sets aside funds for the Victim Assistance in Indian Country (VAIC) grant program to provide direct services to Native Americans by establishing "on-reservation" victim assistance programs in Indian Country.
- The National Aging Resource Center on Elder Abuse (NARCEA) is established by a cooperative agreement among the American Public Welfare Association, the National Association of State Units on Aging, and the University of Delaware. Renamed the National Center on Elder Abuse, it continues to provide information and statistics.
- *State v. Ciskie* is the first case to allow the use of expert testimony to explain the behavior and mental state of an adult rape victim. The testimony is used to show why a victim of repeated physical and sexual assaults by her intimate partner would not immediately call the police or take action. The jury convicts the defendant on four counts of rape.
- The Federal Drunk Driving Prevention Act is passed, and all states raise the minimum drinking age to 21.
- Constitutional amendments are introduced in Arizona, California, Connecticut, Delaware, Michigan, South Carolina, and Washington. Florida's amendment is placed on the November ballot, where it passes with 90 percent of the vote. Michigan's constitutional amendment passes with over 80 percent of the vote.
- The first "Indian Nations: Justice for Victims of Crime" conference is sponsored by the Office for Victims of Crime in Rapid City, South Dakota.
- VOCA amendments legislatively establish the Office for Victims of Crime, elevate the position of Director by making Senate confirmation necessary for appointment, and induce state compensation programs to cover victims of domestic violence, homicide, and drunk driving. In addition, VOCA amendments added a new

"priority" category for funding victim assistance programs at the behest of MADD and POMC for "previously underserved victims of violent crime."

- OVC provides funding for the first time to the National Association of Crime Victim Compensation Boards to expand national training and technical assistance efforts.
- OVC establishes a Federal Emergency Fund for victims in the federal criminal justice system.

1989

- The Federal Crime Victims Fund deposits total \$133 million.
- In a 5-4 decision, the U.S. Supreme Court reaffirms in *South Carolina v. Gathers* (490 U.S. 805) its 1987 decision in *Booth v. Maryland* that victim impact evidence and arguments are unconstitutional (in violation of the Eighth Amendment) when applied to the penalty phase of a capital trial as "a sentence of death must be relevant to the circumstances of the crime or to the defendant's moral culpability." Again, significant dissenting opinions are offered.
- "White Collar Crime 101" is published, which begins a national dialogue about implementing rights and resources for victims of fraud.
- The legislatures in Texas and Washington pass their respective constitutional amendments, which are both ratified by voters.

1990

- The Federal Crime Victims Fund deposits total \$146 million.
- The U.S. Congress passes the Hate Crime Statistics Act requiring the U.S. Attorney General to collect data of incidence of certain crimes motivated by prejudice based on race, religion, sexual orientation or ethnicity.
- The Student Right-to-Know and Campus Security Act, requiring institutions of higher education to disclose murder, rape, robbery, and other crimes on campus, is signed into law by President Bush.

- The Victims of Child Abuse Act of 1990, which features reforms to make the federal criminal justice system less traumatic for child victims and witnesses, is passed by the U.S. Congress.

- The Victims' Rights and Restitution Act of 1990 incorporates a Bill of Rights for federal crime victims and codifies services that should be available to victims of crime.

- U.S. Congress passes legislation proposed by MADD to prevent drunk drivers and other offenders from filing bankruptcy to avoid paying criminal restitution or civil fines.

- The Arizona petition drive to place the victims' rights constitutional amendment on the ballot succeeds, and it is ratified by voters.

- The first National Incidence Study on Missing, Abducted, Runaway and Throwaway Children in America shows that annually, over one million children fall victim to abduction.

- The National Child Search Assistance Act requires law enforcement to enter reports of missing children and unidentified persons in the NCIC computer.

1991

- The Federal Crime Victims Fund deposits total \$128 million.
- U.S. Representative Ilena Ros-Lehtinen (R-FL) files the first Congressional Joint Resolution to place victims' rights in the U.S. Constitution.
- The Violence Against Women Act of 1991 is considered by the U.S. Congress.
- California State University, Fresno approves the first Bachelors Degree Program in Victimology in the nation.
- The Campus Sexual Assault Victims' Bill of Rights Act is introduced in the U.S. Congress.
- The results of the first national public opinion poll to examine citizens' attitudes about violence and victimization, *America Speaks Out*, are released by the National Victim Center during National Crime Victims' Rights Week.

- In a 7-2 decision in *Payne v. Tennessee* (501 U.S. 808), the U.S. Supreme Court reverses its earlier decisions in *Booth v. Maryland* (1987) and *South Carolina v. Gathers* (1989) and rules that testimony and prosecutorial arguments commenting on the murder victim's good character, as well as how the victim's death affected his or her survivors does not violate the defendant's constitutional rights in a capital case.
- The Attorney General's Summit on Law Enforcement and Violent Crime focuses national attention on victims' rights in the criminal justice system.
- The U.S. Attorney General issues new comprehensive guidelines that establish procedures for the federal criminal justice system to respond to the needs of crime victims. The 1991 *Attorney General Guidelines for Victim and Witness Assistance* implement new protections of the Crime Control Act of 1990, integrating the requirements of the Federal Crime Victims' Bill of Rights, the Victims of Child Abuse Act and the Victim and Witness Protection Act of 1982.
- The first national conference that addresses crime victims' rights and needs in corrections is sponsored by the Office for Victims of Crime in California.
- The first nationwide survey is conducted to determine the scope of fraud and its effects, which finds that an estimated \$40 billion is lost to fraud each year. One-third of the people surveyed report that an attempt to defraud them had occurred in the previous year.
- The first International Conference on Campus Sexual Assault is held in Orlando, Florida.
- The American Probation and Parole Association (APPA) establishes a Victim Issues Committee to examine victims' issues and concerns related to community corrections.
- The International Parental Child Kidnapping Act makes the act of unlawfully removing a child outside the United States a federal felony.
- The Spiritual Dimension in Victim Services facilitates a conference of leaders of 13 religious denominations to plan ways in which these large religious bodies can increase awareness of crime victims' needs and provide appropriate services.
- The New Jersey legislature passes a victims' rights constitutional amendment, which is ratified by voters in November.
- Colorado legislators introduce a constitutional amendment on the first day of National Crime Victims' Rights Week. Fifteen days later, the bill is unanimously passed by both Houses to be placed on the ballot in 1992.
- In an 8-0 decision, the U.S. Supreme Court rules in *Simon & Schuster v. New York Crime Victims Board* that New York's notoriety-for-profit statute was overly broad and, in the final analysis, unconstitutional. Notoriety-for-profit statutes had been passed by many states at this time to prevent convicted criminals from profiting from the proceeds of depictions of their crime in the media or publications. States must now review their existing statutes to comply with the Supreme Court's decision.
- The Washington Secretary of State implements the nation's first Address Confidentiality Program, which provides victims of domestic violence, stalking and sexual assault an alternate, confidential mailing address, and offers confidentiality for two normally public records: voter registration and motor vehicle records.
- By the end of 1991, seven states have incorporated victims' rights into their state constitutions.
- OVC provides funding to the National Victim Center for Civil Legal Remedies for Crime Victims to train victim advocates nationwide about additional avenues for victims to seek justice within the civil justice system.

1992

- The Federal Crime Victims fund deposits total \$221 million.

- *Rape in America: A Report to the Nation*, published during National Crime Victims' Rights Week by the National Crime Victims Research and Treatment Center and the National Victim Center, clarifies the scope and devastating effect of rape in this nation, including the fact that 683,000 women are raped annually in the United States.

- The Association of Paroling Authorities, International establishes a Victim Issues Committee to examine victims' needs, rights and services in parole processes.

- The U.S. Congress re-authorizes the Higher Education Bill, which includes the campus Sexual Assault Victims' Bill of Rights.

- The Battered Women's Testimony Act, which urges states to accept expert testimony in criminal cases involving battered women, is passed by Congress and signed into law by President Bush.

- In a unanimous decision, the U.S. Supreme Court – in *R.A.V. vs. City of St. Paul* – strikes down a local hate crimes ordinance in Minnesota.

- Five states – Colorado, Kansas, Illinois, Missouri, and New Mexico – ratify constitutional amendments for victims' rights.

- Twenty-eight states pass anti-stalking legislation.

- Massachusetts passes a landmark bill creating a statewide computerized domestic violence registry and requires judges to check the registry when handling such cases.

- The first national conference is convened, with support from OVC, that brings together representatives from VOCA victim assistance and victim compensation programs.

1993

- The Federal Crime Victims Fund deposits total \$144 million.

- Wisconsin ratifies its constitutional amendment for victims' rights, bringing the total

number of states with these amendments to 14.

- President Clinton signs the "Brady Bill" requiring a waiting period for the purchase of handguns.

- Congress passes the Child Sexual Abuse Registry Act, establishing a national repository for information about child sex offenders.

- Twenty-two states pass anti-stalking statutes, bringing the total number of states with anti-stalking laws to 50, plus the District of Columbia.

1994

- The Federal Crime Victims Fund deposits total \$185 million.

- The American Correctional Association Victims Committee publishes the landmark *Report and Recommendations on Victims of Juvenile Crime*, which offers guidelines for improving victims' rights and services within the juvenile justice system.

- Six additional states pass constitutional amendments for victims' rights – the largest number ever in a single year – bringing the total number of states with amendments to 20. States with new amendments include Alabama, Alaska, Idaho, Maryland, Ohio, and Utah.

- President Clinton signs a comprehensive package of federal victims' rights legislation as part of the Violent Crime Control and Law Enforcement Act. The Act includes:

- Violence Against Women Act, which authorizes more than \$1 billion in funding for programs to combat violence against women.
- Enhanced VOCA funding provisions.
- Establishment of a National Child Sex Offender Registry.
- Enhanced sentences for drunk drivers with child passengers.

- Kentucky becomes the first state to institute automated telephone voice notification to crime victims of their offender's status and release date.

- OVC establishes the Community Crisis Response (CCR) program, using the NOVA model, to improve services to victims of violent crimes in communities that have experienced crimes resulting in multiple victimizations.

1995

- The Federal Crime Victims Fund deposits total \$233 million.
- Legislatures in three states – Indiana, Nebraska, and North Carolina – pass constitutional amendments that will be placed on the ballot in 1996.
- The National Victims' Constitutional Amendment Network proposes the first draft of language for a federal constitutional amendment for victims' rights.
- The U.S. Department of Justice convenes a national conference to encourage implementation of the Violence Against Women Act.
- The first class graduates from the National Victim Assistance Academy in Washington, D.C. Supported by the Office for Victims of Crime, the university-based Academy provides an academically credited 45-hour curriculum on victimology, victims' rights and myriad other topics.
- The U.S. Department of Justice issues Attorney General Guidelines for victim and witness assistance.
- The Beijing World Conference on Women issues a landmark call for global action to end violence against women.

1996

- The Federal Crime Victims Fund reaches an historic high with deposits over \$525 million.
- Federal Victims' Rights Constitutional Amendments are introduced in both houses of Congress with bipartisan support.
- Both presidential candidates and the Attorney General endorse the concept of a Victims' Rights Constitutional Amendment.

- Eight states ratify the passage of constitutional amendments for victims' rights – raising the total number of state constitutional amendments to 29 nationwide.

- The Community Notification Act, known as "Megan's Law," provides for notifying communities of the location of convicted sex offenders by amendment to the national Child Sexual Abuse Registry law.

- President Clinton signs the Antiterrorism and Effective Death Penalty Act, providing one million dollars to strengthen antiterrorism efforts, making restitution mandatory in violent crime cases, and expanding compensation and assistance services for victims of terrorism both at home and abroad, including victims in the military.

- The Office for Victims of Crime uses its new authority under the Antiterrorism and Effective Death Penalty Act to provide substantial financial assistance to the victims and survivors of the Oklahoma City bombing.

- The Mandatory Victims' Restitution Act, enacted as Title II of the Antiterrorism and Effective Death Penalty Act, allows federal courts to award "public harm" restitution directly to state VOCA victim assistance programs. As a result of the new sentencing guidelines, judges can require federal offenders in certain drug offense cases to pay "community restitution." The Act also requires federal courts to order restitution to victims of fraud.

- The VOCA definition of "crime victim" is expanded to include victims of financial crime, allowing this group to receive counseling, advocacy, and support services.

- The National Domestic Violence Hotline is established to provide crisis intervention information and referrals to victims of domestic violence and their friends and family.

- OVC launches a number of international crime victim initiatives, including working to foster worldwide implementation of a United Nations declaration on victims' rights and working to better assist Americans who are victimized abroad.

- The Church Arson Prevention Act is signed into law in July, in response to increasing numbers of acts of arson against religious institutions around the country.

- The Drug-induced Rape Prevention Act is enacted to address the emerging issue of drug-facilitated rape and sexual assault.

- The Office of Juvenile Justice and Delinquency Prevention (OJJDP), within the U.S. Department of Justice, issues the Juvenile Justice Action Plan that includes recommendations for victims' rights and services for victims of juvenile offenders within the juvenile justice system.

1997

- The Federal Crime Victims Fund reaches its second highest year in fund collections with deposits totaling \$363 million.

- In January, a federal victims' rights constitutional amendment is re-introduced in the opening days of the 105th Congress with strong bipartisan support.

- In February, OVC convenes the first National Symposium on Victims of Federal Crimes. Coordinated by the National Organization for Victim Assistance, the symposium provides intensive training to nearly 1,000 federal employees who work with crime victims around the world.

- In March, Congress passes at historic speed the Victims' Rights Clarification Act of 1997 to clarify existing federal law allowing victims to attend a trial and to appear as "impact witnesses" during the sentencing phase of both capital and non-capital cases. Supported by the Justice Department, President Clinton immediately signs the Act, allowing the victims and survivors of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City to both observe the trial that is scheduled to begin within days, and to provide input later at sentencing.

- In April, the Senate Judiciary Committee conducts hearings on the proposed federal

constitutional amendment. While not endorsing specific language, Attorney General Janet Reno testifies in support of federal constitutional rights for crime victims.

- In June, President Clinton reaffirms his support of federal constitutional rights for crime victims in a Rose Garden ceremony attended by members of Congress, criminal justice officials, and local, state, and national victims' rights organizations. Also that month, the Judiciary Committee in the U.S. House of Representatives conducts its first hearing on the proposed amendment.

- To fully recognize the sovereignty of Indian Nations, OVC for the first time provides victim assistance grants in Indian Country directly to the tribes.

- A federal anti-stalking law is enacted by Congress.

- Due to the large influx of VOCA funds in the previous fiscal year, OVC hosts a series of regional meetings with state VOCA administrators to encourage states to develop multi-year funding strategies to help stabilize local program funding, expand outreach to previously underserved victims, and to support the development and implementation of technologies to improve victims' rights and services.

- OVC continues its support of the victims and survivors of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City by funding additional advocates, crisis counseling, and travel expenses to court proceedings for the bombing victims. When the venue of the trial is changed to Denver, Colorado, OVC provides funding for a special closed-circuit broadcast to victims and survivors in Oklahoma City.

- A comprehensive national training conference for VOCA compensation and assistance programs is hosted by the National Association of Crime Victim Compensation Boards and the National Organization for Victim Assistance with support from OVC. VOCA representatives from all 50 states and every territory are in attendance.

- During National Crime Victims' Rights Week, OVC officially launches its homepage, www.ojp.usdoj.gov/ovc, providing Internet access to its comprehensive resources about victims' rights and services.

- *New Directions from the Field: Victims' Rights and Services for the 21st Century* is published by OVC. It assesses the nation's progress in meeting the recommendations set forth in the Final Report of the 1982 President's Task Force on Victims of Crime, and issues over 250 new recommendations from the field for the next millennium.

1998

- The Federal Crime Victims Fund deposits total \$324 million.

- Senate Joint Resolution 44, a new bipartisan version of the federal Victims' Rights Amendment, is introduced in the Senate by Senators Jon Kyl and Dianne Feinstein. The Senate Judiciary Committee subsequently approves SJR 44 by an 11-6 vote. No further action is taken on SJR 44 during the 105th Congress.

- Four new states pass state victims' rights constitutional amendments: Louisiana by a voter margin of approval of 69 percent; Mississippi by 93 percent; Montana by 71 percent; and Tennessee by 89 percent. Also in 1998, the Supreme Court of Oregon overturns the Oregon state victims' rights amendment, originally passed in 1996, citing structural deficiencies.

- In April, representatives from system and community-based organizations meet in St. Louis for OVC's Fraud Victimization Focus Group. Participants call for increased awareness, research, accountability, and services for victims of fraud and identity theft. OVC's "Victims of Fraud & Economic Crime" publication results from this focus group.

- PL 105-244, the Higher Education Amendments of 1998, is passed. Part E of this legislation, "Grants to Combat Violent Crimes Against Women on Campus," is authorized through the year 2003, and appropriates a total

of \$10 million in grant funding to the Violence Against Women Grants Office for fiscal year 1999. Another primary aim of this legislation is to reduce binge drinking and illegal alcohol consumption on college campuses.

- The Child Protection and Sexual Predator Punishment Act of 1998 is enacted, providing for numerous sentencing enhancements and other initiatives addressing sex crimes against children, including crimes facilitated by the use of interstate facilities and the Internet.

- The Crime Victims with Disabilities Act of 1998 is passed, representing the first effort to systematically gather information about the extent of victimization of individuals with disabilities. This legislation directs the Attorney General to conduct a study on crimes against individuals with developmental disabilities within 18 months. In addition, the Bureau of Justice Statistics must include statistics on the nature of crimes against individuals with developmental disabilities and victim characteristics in its annual National Crime Victimization Survey by 2000.

- The Identity Theft and Deterrence Act of 1998 is signed into law in October. This landmark federal legislation outlaws identity theft and directs the U.S. Sentencing Commission to consider various factors in determining penalties, including the number of victims and the value of losses to any individual victim. The Act further authorizes the Federal Trade Commission to log and acknowledge reports of identity theft, provide information to victims, and refer complaints to appropriate consumer reporting and law enforcement agencies.

1999

- The Federal Crime Victims Fund deposits total a record \$985 million.

- On January 19, 1999, the Federal Victims' Rights Constitutional Amendment (Senate Joint Resolution 3, identical to SJR 44) is introduced before the 106th Congress.

- The Victim Restitution Enforcement Act of 1999 (S. 145), sponsored by Senator Abraham

Spencer and introduced in the Senate Judiciary Committee on January 19, 1999, is officially titled a Bill to Control Crime by Requiring Mandatory Victim Restitution. Components of the proposed bill include establishment of procedures regarding the court's ascertaining of the victim's losses; requirement that restitution to victims be ordered in the full amount of their losses without consideration of the defendant's economic circumstances; and authorization of the court, upon application of the United States, to enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action necessary to preserve the availability of property or assets necessary to satisfy the criminal restitution order.

- On January 20, 1999, Senator Joseph Biden introduces the Violence Against Women Act II, a bill that extends and strengthens the original 1994 Violence Against Women Act. Key provisions of this bill would: (1) strengthen enforcement of "stay away" orders across state lines; (2) boost spending for more women's shelters; (3) end insurance discrimination against battered women; (4) extend the Family and Medical Leave Act to cover court appearances by battered women; and (5) target the "acquaintance rape drug," Rohypnol, with maximum federal penalties.

- The fifth National Victim Assistance Academy is held in June at five university locations across the United States, bringing the total number of Academy graduates to nearly 1,000.

- OVC issues the first grants to create State Victim Assistance Academies.

- The National Crime Victim Bar Association is formed by the National Center for Victims of Crime to promote civil justice for victims of crime.

2000

- The Federal Crime Victims Fund deposits total \$777 million.

- The U.S. Congress passes a new national drunk driving limit of 0.08 blood alcohol concentration (BAC) with the strong support of Mothers Against Drunk Driving and other victim

advocacy organizations, as well as leading highway safety, health, medical, law enforcement, and insurance groups. The new law, passed with strong bipartisan support, requires the states to pass 0.08 "per se intoxication" laws or lose a portion of their annual federal highway funding.

- In October, the Violence Against Women Act of 2000 is signed into law by President Clinton, extending VAWA through 2005, and authorizing funding at \$3.3 billion over the five-year period. The Act:

- Authorizes \$80 million a year for rape prevention and education grants.
- Expands federal stalking statutes to include stalking on the Internet.
- Authorizes \$875 million over five years for battered women's shelters.
- Provides \$25 million in 2001 for transitional housing programs.
- Provides funding totaling \$25 million to address violence against older women and women with disabilities.

- The Internet Fraud Complaint Center Website, www.ifccfbi.gov, is created by the U.S. Department of Justice, Federal Bureau of Investigation, and the National White Collar Crime Center to combat Internet fraud by giving consumers a convenient way to report violations and by centralizing information about fraud for law enforcement.

- Victimization rates as reported in the National Crime Victimization Survey are the lowest recorded since the survey's creation in 1973.

- The Treasury Department conducts the National Summit on Identity Theft, which addresses prevention techniques, victims' experiences, and remediation in the government and private sector.

- In April, the Federal Victims' Rights Constitutional Amendment (SJR 3) is addressed for the first time by the full U.S. Senate. On April 27, following two-and-a-half days of debate, SJR 3 is withdrawn for further consideration by its co-sponsors, Senators Kyl (R-AZ) and Feinstein (D-CA), when it becomes apparent that the measure would not receive a two-thirds majority vote necessary for approval.

- The Victims of Trafficking and Violence Protection Act of 2000 provides for: immigrants who have been victimized in the most severe fashion with the ability to remain longer in the United States and, in some cases, receive Federal and state assistance; protections for certain crime victims, including violence against women; and a comprehensive law for law enforcement agencies that will enable them to pursue the prosecution and conviction of traffickers.

- In November, the National Victim Assistance Academy launches its Advanced Topic Series with an offering of "The Ultimate Educator: Maximizing Adult Learning Through Training and Instruction".

2001

- The Federal Crime Victims Fund deposits total \$544 million.

- The National Crime Victimization Survey results for 2000 are released, showing that victimization rates continue to drop, reaching a new low of 25.9 million victims.

- There were 3047 victims killed in the terrorist attacks on American soil on September 11, 2001: 2175 males and 648 females died at the World Trade Center; 108 males, 71 females, and 5 unknown died at the Pentagon; 20 males and 20 females died in the plane crash in Somerset County, PA; and countless others were injured by these terrorist attacks.

- Congress responds to the terrorist acts of September 11 with a raft of new laws, providing funding for victim assistance, tax relief for victims, and other accommodations and protections for victims. A new federal compensation program specifically for the victims of September 11 was created as a part of the Air Transportation Safety and System Stabilization Act. The program included many types of damages normally available only through civil actions, such as payment for pain and suffering, lifetime lost earnings, and loss of enjoyment of life. To receive compensation, claimants must waive their right to bring civil action for damages suffered as a result of the terrorist acts.

- As a part of the package of antiterrorism legislation called the USA Patriot Act of 2001, changes are made to the Victims of Crime Act (VOCA), including increasing the percentage of state compensation payments reimbursable by the federal government, and allowing OVC to fund compliance and evaluation projects.

- OVC augments state victim compensation funding to aid victims of the September 11 terrorist attacks in New York, Virginia, and Pennsylvania; offer assistance to victims of the September 11 terrorist attack on the Pentagon through the Pentagon Family Assistance Center; and establish a toll-free telephone number and secure web site for victims and their immediate family members.

- The reauthorization of the Violence Against Women Act of 1994 (VAWA) is passed into law, and authorizes VAWA at \$3 billion through FY 2005. It reauthorizes key programs included in the original VAWA, and makes some improvements, including:

- Authorizing grants for legal assistance of victims of domestic violence, stalking and sexual assault.

- Providing funding for transitional housing assistance.

- Improving full faith and credit enforcement and computerized tracking of protection orders.

- Strengthening and refining protections for battered immigrant women.

- Authorizing grants for supervised visitation and safe visitation exchange of children.

- Expanding several areas of the key grant programs to cover violence that arises in dating relationships.

- The Child Abuse Prevention and Enforcement Act and Jennifer's Law maintain the annual Crime Victims Fund set-aside for child abuse victims at \$10 million, and allows the use of Byrne grant funds for the prevention of child abuse and neglect. Jennifer's Law authorizes \$2 million per year through FY 2002 for states to apply for grants to cover costs associated with entering complete files of unidentified crime victims into the FBI's NCIC database.

- Regulations for victims of trafficking are adopted, providing a wholesale change in the way the federal government responds to a class of crime victims, affecting policies and procedures at the Department of State, the Department of Health and Human Services, and several Department of Justice agencies, including the FBI, the Immigration and Naturalization Service, and U.S. Attorneys offices.

2002

- The Federal Crime Victims Fund deposits total \$519 million.
- The National Crime Victimization Survey for 2001 continued to show a decline in crime victimization. Violent crime victimization dropped 10% and property crime dropped 6%.
- All 50 states, District of Columbia, U.S. Virgin Islands, Puerto Rico, and Guam have established crime victim compensation programs.
- The National Association of VOCA Assistance Administrators (NAVAA) is created. With OVC support, NAVAA provides technical assistance and training to state VOCA assistance administrators.
- A "National Public Awareness and Education Campaign" is sponsored by OVC in conjunction with Justice Solutions, Parents of Murdered Children, and the Victims' Assistance Legal Organization to promote the scope and availability of victims' rights and services nationwide.
- OVC sponsors a series of regional roundtables to hear first-hand from victims and survivors about their experiences with the criminal and juvenile justice systems.
- The first "Helping Outreach Programs to Expand" grants are made available to grassroots, nonprofit, community-based victim organizations and coalitions to improve outreach and services to victims of crime through support of program development, networking, coalition building, and service delivery.

2003

- The Office for Victims of Crime celebrates its 20th anniversary of service to crime victims and those who assist them.
- The Senate Judiciary Committee passes the Federal Victims' Rights Constitutional Amendment to ensure basic rights to victims nationwide.
- Congress makes the Office on Violence Against Women (formally the Violence Against Women Act Office) a permanent independent office within the Department of Justice.
- The PROTECT Act of 2003 – also known as the "Amber Alert" law – creates a national network of AMBER (America's Missing: Broadcast Emergency Response) to facilitate rapid law enforcement and community response to kidnapped or abducted children.
- Congress passes the Prison Rape Elimination Act - designed to track and address the issue of rape in correctional institutions.
- The National Domestic Violence Hotline receives its one millionth call.

"Crime Victims' Rights in America: An Historical Overview" was originally compiled in 1992 by Anne Seymour of Justice Solutions, Dan Eddy of the National Association of Crime Victim Compensation Boards, and John Stein of the National Organization for Victim Assistance. It is updated annually in the Office for Victims of Crime National Crime Victims' Rights Week Resource Guide. Special thanks is extended to Steve Derene, Director of the National Association of VOCA Assistance Administrators, for his ongoing contributions to this Project.

study of health-care workers who had percutaneous exposures to HIV-infected blood. On the basis of these results and the biologic plausibility of the effectiveness of antiretroviral agents in preventing infection, postexposure therapy has been recommended for health-care workers who have occupational exposures to HIV. The degree to which these findings can be extrapolated to other HIV-exposure situations, including sexual assault, is unknown. Although a definitive recommendation cannot be made regarding postexposure antiretroviral therapy after sexual exposure to HIV, such therapy should be considered in cases in which the risk for HIV exposure during the assault is likely high.

Health-care providers who consider offering postexposure therapy should take into account the likelihood of exposure to HIV, the potential benefits and risks of such therapy, and the interval between the exposure and initiation of therapy. Timely determination of the HIV-infection status of the assailant is not possible in many sexual assaults. Therefore, the health-care provider should assess the local epidemiology of HIV/AIDS, the nature of the assault, and any available information about HIV-risk behaviors exhibited by the assailant(s) (e.g., high-risk sexual practices and injection-drug or crack cocaine use). When an assailant's HIV status is unknown, factors that should be considered in determining whether an increased risk of HIV transmission exists include a) whether oral, vaginal, or anal penetration occurred; b) whether ejaculation occurred on mucous membranes; c) whether multiple assailants were involved; d) whether mucosal lesions are present in assailant or survivor; and e) other characteristics of the assault, survivor, or assailant. If antiretroviral postexposure prophylaxis is offered, the following information should be discussed with the patient: a) the unknown efficacy and known toxicities of antiretrovirals; b) the close follow-up that is necessary; c) the importance of strict compliance with the recommended therapy; and d) the necessity of immediate initiation of treatment for maximal likelihood of effectiveness (as soon as possible after, and up to 72 hours following, the most recent assault). Providers should emphasize that although data are limited, postexposure antiretroviral therapy appears to be well tolerated in both adults and children, and severe adverse effects are rare. Personnel likely to examine survivors of sexual assault should consult with federal or state health departments or other professionals knowledgeable in STDs to develop algorithms and protocols for the determination of risk for exposure to HIV and management in their community. Clinical management of the patient should be implemented according to the following guidelines (107,108). If postexposure HIV prophylaxis is being considered, consultation with an HIV specialist is recommended.

Recommendations for Postexposure Assessment of Adolescent and Adult Survivors within 72 hours of Sexual Assault ¹⁰⁹

- Review HIV/AIDS local epidemiology and assess risk for HIV infection in assailant.
- Evaluate circumstances of assault that may affect risk for HIV transmission.
- Consult with a specialist in HIV treatment if postexposure prophylaxis is considered.
- If the survivor appears to be at risk for HIV transmission from the assault, discuss antiretroviral prophylaxis, including toxicity and unknown efficacy.
- If the survivor chooses to receive antiretroviral postexposure prophylaxis (107), provide enough medication to last until the next return visit; reevaluate survivor 3–7 days after initial assessment and assess tolerance of medications.
- Perform HIV antibody test at original assessment; repeat at 6 weeks, 3 months, and 6 months.

Sexual Assault or Abuse of Children

Recommendations in this report are limited to the identification and treatment of STDs. Management of the psychosocial aspects of the sexual assault or abuse of children is beyond the scope of these recommendations.

The identification of sexually transmissible agents in children beyond the neonatal period suggests sexual abuse. The significance of the identification of a sexually transmitted agent in such children as evidence of possible child sexual abuse varies by pathogen. Postnatally acquired gonorrhea; syphilis; and non-transfusion, non-perinatally acquired HIV are usually diagnostic of sexual abuse. Sexual abuse should be suspected in the presence of genital herpes. The investigation of sexual abuse among children who possibly have a sexually transmitted infection should be conducted in compliance with recommendations by clinicians who have experience and training in all elements of the evaluation of child abuse, neglect, and assault (109–111). The social significance of each sexually transmitted infection and the recommended action regarding reporting of suspected child sexual abuse varies by STD (Table 5). In all cases in which a sexually transmitted infection has been diagnosed in a child, efforts should be made to detect evidence of sexual abuse, including conducting diagnostic testing for other commonly occurring sexually transmitted infections (109,110).

¹⁰⁹ Assistance with postexposure prophylaxis decisions can be obtained by calling the National HIV Telephone Consultation Service (tel: 800-933-3413).

**Title VIII: Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability
Amendment Act of 2003**

Exhibit C

Missouri Constitutional Amendment for Victims' Rights

A state Constitutional Amendment for Victims' Rights was passed in 1992.

- **The amendment was passed by 84% of voters.¹**

ARTICLE I, SECTION 32

1. Crime victims, as defined by law, shall have the following rights, as defined by law:

- a. The right to be present at all criminal justice proceedings at which the defendant has such right, including juvenile proceedings where the offense would have been a felony if committed by an adult;
- b. Upon request of the victim, the right to be informed of and heard at guilty pleas, bail hearings, sentencing, probation revocation hearings, and parole hearings, unless in the determination of the court the interests of justice require otherwise;
- c. The right to be informed of trials and preliminary hearings;
- d. The right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law;
- e. The right to the speedy disposition and appellate review of their cases, provided that nothing in this subdivision shall prevent the defendant from having sufficient time to prepare his defense;
- f. The right to reasonable protection from the defendant or any person acting on behalf of the defendant;
- g. The right to information concerning the escape of an accused from custody or confinement, the defendant's release and scheduling of the defendant's release from incarceration; and
- h. The right to information about how the criminal justice system works, the rights and the availability of services, and upon request of the victim the right to information about the crime.

2. Notwithstanding section 20 of article I of this Constitution, upon a showing that the defendant poses a danger to a crime victim, the community, or any other person, the court may deny bail or may impose special conditions which the defendant and surety must guarantee.

3. Nothing in this section shall be construed as creating a cause of action for money damages against the state, a county, a municipality, or any of the agencies, instrumentalities, or employees provided that the General Assembly may, by statutory enactment, reverse, modify, or supersede any judicial decision or rule arising from any cause of action brought pursuant to this section.

4. Nothing in this section shall be construed to authorize a court to set aside or to void a finding of guilt, or an acceptance of a plea of guilty in any criminal case.

The general assembly shall have power to enforce this section by appropriate legislation.

¹ According to the National Victim's Rights Constitutional Amendment Network,
<http://www.nvcan.org/cansmo.html>

The National Center for Victims of Crime

Victims' Rights Sourcebook

Section 11: THE RIGHT TO RESTITUTION FROM THE OFFENDER

INTRODUCTION

In 1982, the President's Task Force on Victims of Crime called for mandatory restitution in all criminal cases, unless the presiding judge could offer compelling reasons to the contrary.⁽¹⁾ As the Task Force noted, "The concept of personal accountability for the consequences of one's conduct, and the allied notion that the person who causes the damage should bear the cost, is at the heart of civil law. It should be no less true in criminal law."⁽²⁾

Studies indicate that restitution is one of the most significant factors influencing victims' satisfaction with the criminal justice process.⁽³⁾ Although restitution has always been available via statute or common law, it remains one of the most underutilized means of providing crime victims with a measurable degree of justice. Restitution laws every year are revised by legislatures, to broaden the scope of restitution, and to promote and improve its ordering and collection.

Restitution statutes are extensive. With the exception of the tables provided, concerning the mandatory nature of restitution orders and the civil enforcement of such orders, this summary will not attempt to discuss the laws of every state but will instead provide examples of statutory approaches.

LOSSES COVERED

Historically, only those persons who have suffered physical injury or financial loss as a direct result of a crime have been eligible to receive restitution from the perpetrator for their out-of-pocket expenses. But as restitution statutes have evolved, definitions of who qualifies and the kind of losses covered have broadened considerably. Today, not only do victims themselves qualify for restitution, but, in some states, family members, victims' estates, private entities, victim service agencies, and private organizations who provide assistance to victims can seek restitution as well.⁽⁴⁾ Definitions for compensable losses under state restitution laws have also expanded to include psychological treatment, sexual assault exams, HIV testing, occupational/rehabilitative therapy, lost profits, moving and meal expenses, case-related travel expenses, and burial expenses.

WHERE RESTITUTION REQUIRED

More states are making restitution mandatory as part of a criminal sentence. Aside from the direct benefits to crime victims and society that come from restoring the victims' financial losses, there is a growing recognition that holding offenders directly accountable to their victims as part of a sentence has a rehabilitative effect on the offenders themselves. In a recent revision to its restitution laws, the California Legislature noted that "Restitution is recognized to have a rehabilitative effect on criminals ... [and] Restitution is recognized as a deterrent to future criminality."⁽⁵⁾

Currently, 29 states require a court to order restitution to the victim or to state on the record the reasons for failing to order restitution. In 12 of those states, restitution is mandatory, while in another seven, a court may only decline to order restitution where there are compelling or extraordinary circumstances. Six states couch their restitution statutes as mandatory (i.e., "the court shall order restitution") but allow such broad exceptions that the "right" to restitution is real

in the discretion of the court. Those six states do not require the court to provide the reasons for failing to order restitution.

Some statutes are self-conflicting -- part of the statute will set out an absolute requirement of restitution and another will provide for procedures where restitution is not ordered.⁽⁶⁾ In a few states, restitution orders are optional; however, the court is required to make a finding of the victim's damages and to enter a civil judgment for that amount.⁽⁷⁾ Similarly, in Minnesota, if the court grants only partial restitution, it is to set out the full amount of restitution that may be docketed as a civil judgment.⁽⁸⁾ In Rhode Island, the judge is required to enter a judgment of civil liability at sentencing. The victim must then bring an action to prove damages.⁽⁹⁾ Table 11-A shows the language of each state's restitution statute.

PROMOTING THE ORDERING OF RESTITUTION

One reason judges have given for failing to order restitution is a lack of information regarding the victim's loss or the offender's ability to pay. To facilitate the ordering of restitution, courts should have before them at the time of sentencing sufficient information to enable them to make a determination on the proper amount of a restitution order.

In many states, detailed information about the victim's financial loss is part of the victim impact statement. For example, in Idaho, the presentence report is to include "a full statement of economic loss suffered by the victim or victims of the defendant's crime."⁽¹⁰⁾ In Montana, the court is to order the probation officer, restitution officer, or other designated person to include information about the victim's loss and defendant's ability to pay in the presentence report.⁽¹¹⁾ The documentation regarding the victim's loss contained in the presentence report can be submitted by the victim or by the compensation board if the board has paid compensation to the victim. Probation officers and victim/witness coordinators should be trained to assist victims in compiling information about the financial harm caused by the offense. They should also receive training on the types of expenses recoverable.

One important step states can take to improve the ordering of restitution is to inform victims early in the process of the right to restitution from the offender. With that knowledge, a victim can begin accumulating receipts and other evidence of financial loss, and will be in a better position to prove damages at the time of sentencing.

Judges should also have information about the offender's financial assets or future ability to pay. This, too, can be part of the presentence report.⁽¹²⁾ California has some "county financial evaluation officers", and the law provides that in any court where such an officer is available, the court may order the offender to appear before such officer for a financial evaluation of the defendant's ability to pay restitution.⁽¹³⁾ Having this information at the time of sentencing can give judges the confidence to order restitution or to set a payment schedule.

Where courts fail to order restitution, states may consider the adoption of enforcement mechanisms. For example, Maryland permits a victim to appeal a judge's order regarding restitution.⁽¹⁴⁾

IMPROVING THE RATES OF COLLECTION

The availability of information regarding the offender's assets can also help in enforcing restitution orders. New Jersey law provides that information from the presentence report concerning the defendant's financial resources is to be made available on request to the compensation board or to any officer authorized to collect payment on an assessment, restitution or fine.⁽¹⁵⁾

In some states, the offender's financial resources are investigated following the entry of a restitution order. In Minnesota, an offender who is ordered to pay more than \$500 in restitution is to file an affidavit of financial disclosure with the correctional agency investigating the offender's financial resources.⁽¹⁶⁾

For the efficient collection of restitution, orders and payments must be tracked, and those officials charged with enforcing restitution need the motivation to carry out their responsibilities. States are trying to improve both of these aspects through the imposition of administrative fees on restitution orders. For example, in Washington, individualized monthly billings and weekly notice of payments by offenders are provided by the county clerk to the department of corrections.⁽¹⁷⁾

In Massachusetts, the victim has the right to receive a copy of the schedule of restitution payments and the name and telephone number of the official responsible for supervising payments.⁽¹⁸⁾ In Minnesota, the court administrator is to keep records of the amount of restitution ordered, any change made to the amount ordered, and the amount actually paid. The administrator is to forward the data collected to the state court administrator, who shall compile the data and make it available to the supreme court and legislature upon request.⁽¹⁹⁾ New Jersey charges a \$1 transaction fee for restitution payments, to be used to develop computerized tracking.⁽²⁰⁾

It can also be important for an official to be charged with monitoring the offender's compliance and reporting any failure to pay restitution to the court. In New York, the administering entity is responsible for reporting to the court the offender's failure to comply with the restitution order.⁽²¹⁾ In Michigan, where restitution is a condition of probation, the probation officer is to verify the offender's compliance with the restitution order at least 60 days prior to the end of the period of probation, and report to the court if the offender is not current in the payments. The court may then take action to ensure compliance.⁽²²⁾

Many officials charged with collection of restitution have complained that they are already overburdened, and cannot take on the additional task of monitoring and enforcing restitution without additional resources. To alleviate the additional costs such activities impose on those officials and agencies, states are beginning to charge offenders an administrative or collection fee, or to allow the use of private collection agencies. For example, Arizona charges an \$8 fee for offenders paying in installments.⁽²³⁾ Wisconsin imposes a 5% surcharge on the offender for administrative costs related to collection of restitution, costs, attorneys fees, fines, and related costs.⁽²⁴⁾

In Alabama, district attorneys may establish a "restitution recovery division." The court may transfer any order to pay victims' restitution, court costs, or other court imposed payments which is in default to a D.A.'s restitution recovery division, and must at the time of transfer assess an additional collection fee of 30%. The D.A.'s office keeps 75% of that collection fee recovered, with the remaining 25% transferred to the court. The D.A. and court are also authorized to contract with private entities for collection.⁽²⁵⁾

A 1996 Kansas provision allows a victim to use an outside agency approved by the Attorney General to collect restitution. The agency may receive a fee not to exceed 33% of the amount collected. However, unlike Alabama, this fee is deducted from the amount collected and is not in addition to the restitution or other amounts ordered. Thus, the crime victim award is potentially reduced by one-third. Moreover, if the victim later brought a civil action and won, the amounts previously collected would be set off against the civil judgment, including that 1/3 of the restitution award which the victim never received. The decision whether to use the services of this outside collection agency to collect the restitution rests with the victim.⁽²⁶⁾

An increasing number of states require payment of restitution from prison work program wages.⁽²⁷⁾ Some states, such as Arizona and Kansas, require that any payment by the state to the defendant, including tax refunds, shall be paid first to satisfy restitution.⁽²⁸⁾ In New Mexico where a prisoner recovers from a claim against the state, any money paid to satisfy the claim is to be first applied to restitution orders.⁽²⁹⁾

Most states make restitution, where ordered by the court at sentencing, a condition of probation or parole. Offenders who willfully fail to pay risk being held in contempt⁽³⁰⁾ or having their parole or probation extended or revoked. In some states, authorities are entitled to seize offenders' financial assets and property through garnishment and attachment to satisfy restitution orders. A majority of states allow restitution orders to be enforced as civil judgments at the time of the order or at the end of an offender's supervisory period. (See Table 11-B).

States are experimenting with other enforcement mechanisms, as well. In Massachusetts, the court may issue a default warrant for a defendant's failure to pay restitution, court costs, or other court ordered sums. The court is to order an additional assessment in those cases of \$50, which may be waived by the court on a finding of good cause. The person may be discharged on payment of the amount owed plus the assessment⁽³¹⁾ In Oregon, the court may report a default in the payment of restitution to the consumer reporting agency⁽³²⁾ In Florida, the court is to issue an income deduction order at the time it orders restitution⁽³³⁾ Alabama also provides for income withholding orders⁽³⁴⁾ In Colorado, the department or agency supervising collection of restitution as part of a plea bargain or as a condition of probation or deferred sentence can impose a bad check charge⁽³⁵⁾ In Delaware, the court may hold an offender's driver's license as security for payment of restitution or other costs or assessments. If the offender fails to pay as ordered, the driver's license is suspended⁽³⁶⁾

RESTITUTION WHERE THE VICTIM CAN'T BE FOUND

If the victim can't be located, restitution money can be applied to other designated funds, like the general victim services fund⁽³⁷⁾ or the general fund⁽³⁸⁾ Rhode Island also provides that the interest that accrues by the restitution account is to be deposited in the violent crime indemnity fund.

CONCLUSION

Strengthening restitution statutes should be a priority for states. Judges must be encouraged to order full restitution; probation and parole officials must be motivated and have the means to administer restitution collection, and both must play an active role in enforcing orders when offenders refuse to pay. The laws reflected in the following tables are current through 1995.

TABLE 11-A

RESTITUTION: NATURE OF RIGHT

* States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.

Current through 1995

RESTITUTION IS MANDATORY - COURT MUST ORDER AND/OR VICTIM HAS A STRONG CONSTITUTIONAL RIGHT TO RESTITUTION	
STATE/STATUTE	DETAILS OF PROVISION
Alabama § 15-18-67	In every case in which the defendant is convicted of a crime resulting in pecuniary damages or loss to victim, court must hold restitution hearing and order restitution.
Alaska Const. Art. 2, Sec. 24	Victims have a constitutional "right to restitution from the accused," "as provided by law." Implementing legislation has not yet been adopted. (Previously existing statute gives court discretion to order restitution. § 12.55.045)
Arizona Const. Art. II, Sec. 21	Victims have constitutional right "to receive prompt restitution from the person or persons convicted of the criminal conduct." "If person is convicted of an offense, the court shall require the convicted person to make restitution...in the full amount of the

§ 13-603	economic loss."
California Const. Art I, Sec. 28 PC §§ 1202.4, 1203.04	Constitution provides that "restitution shall be ordered from convicted offender in every case." Statutes also require court to order restitution.
Delaware tit. 11 § 4204	"Wherever a victim of crime suffers a monetary loss as a result of the defendant's criminal conduct, the sentencing court shall impose as a special condition of the sentence that the defendant make payment of restitution to the victim in such amount as to make the victim whole, insofar as possible, for the loss sustained."
Florida § 775.089 § 921.187	"[I]n addition to any punishment, the court shall order the defendant to make restitution to the victim for: damage or loss caused directly or indirectly by the defendant's offense; and damage or loss related to the defendant's criminal episode, unless it finds clear and compelling reasons not to order such restitution... If the court does not order restitution, or orders restitution of only a portion of the damages ... it shall state on the record in detail the reasons therefore." "The court shall require an offender to make restitution subject to section 775.089, unless the court finds clear and compelling reasons not to order restitution as provided in that section."
Idaho Const. Art. 1, Sec. 22 § 19-5304	Victims have a constitutional right "to restitution, as provided by law." "Unless the court determines that an order of restitution would be inappropriate or unworkable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim." The court must state its reasons on the record if it fails to order restitution. The immediate inability of the defendant to pay shall not be, in and of itself, a reason to not order restitution.
Iowa § 910.2	"In all criminal cases except simple misdemeanors...the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities."
Kansas § 21-4603d § 21-4610	For crimes committed on or after July 1, 1993, in addition to or in lieu of other penalties, "the court shall order the defendant to pay restitution ... unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor." Also, restitution is a mandatory condition of probation, suspension of sentence or assignment to a community correctional services program, unless the court finds compelling circumstance which would render a plan of restitution unworkable. [See also Kansas code § 8-1019, below.]
Missouri Const. Art. I, Sec. 32 § 595.209	Crime victims have the constitutional "right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law" as provided by law. The statute provided victims are to be informed of the right to restitution.
New Mexico	

<p>Const. Art. 2, Sec. 24</p> <p>§ 31-26-4</p>	<p>Constitution provides victims have "the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury" as provided by law. Statute provides the same.</p>
<p>Pennsylvania</p> <p>§ 18-1106</p>	<p>"The court shall order full restitution ... regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss."</p>
<p>South Carolina</p> <p>§ 16-3-1530</p>	<p>Mandatory unless court finds compelling and substantial reasons not to order (need not state reasons on record).</p>
<p>* Texas</p> <p>Const. Art. 1, Sec. 30</p>	<p>Victims have a constitutional "right to restitution" on request. The statute conflicts with this unambiguous constitutional right, stating that court shall give its reasons for failing to order restitution, CCP Art. 42.037.</p>
<p>Virginia</p> <p>§ 19.2-305.1</p>	<p>Convicted offenders "shall make at least partial restitution for any property damage or loss caused by the crime or for actual medical expenses incurred by the victims as a result of the crime."</p>
<p>Washington</p> <p>§ 9.94A.142</p>	<p>"Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record." Restitution shall also be ordered if any offender agrees to pay restitution as part of a plea agreement to a victim of an offense which is not prosecuted pursuant to a plea agreement.</p>
<p>Wisconsin</p> <p>Const. Art. I, Sec. 9m</p> <p>§ 973.20</p>	<p>Under the constitution, the legislature must create a statute to provide a right to restitution.</p> <p>"When imposing sentence or ordering probation for any crime, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim ... unless the court finds substantial reason not to do so and states the reason on the record."</p>

RESTITUTION MANDATORY UNLESS COURT PROVIDES REASONS ON RECORD FOR FAILURE TO ORDER RESTITUTION - DOES NOT REQUIRE "EXTRAORDINARY AND COMPELLING" CIRCUMSTANCES

STATE/STATUTE	DETAILS OF PROVISION
<p>Maine</p> <p>tit. 17-A § 1323</p> <p>Michigan</p>	<p>"The Court Shall, Whenever Practicable, Inquire of a Prosecutor, Police Officer of Victim with Respect to the Extent of the Victim's Financial Loss, and Shall Order Restitution Where Appropriate." If the Court Does Not Impose Restitution, it Shall State in Open Court or in Writing the Reasons for Not Imposing Restitution.</p>

Const. Art. I, Sec. 24	Victims have a constitutional right to restitution as provided by law.
§ 28.1287(766)	"If the court does not order restitution, or orders only partial restitution ... the court shall state on the record the reasons for that action."
§ 28.1287(826)	
* Minnesota § 611.04	Statute internally conflicting - "a victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding" and "the court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if information relating to restitution has been presented."
New York PL § 60.27	Where the district attorney advises the court that the victim seeks restitution and presents information about the victim's losses or damage and the amount of restitution sought, "the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution" or reparation to the victim. If the court does not order restitution or reparation, the court shall clearly state its reasons on the record.
North Dakota § 12.1-32-08	"The court, when sentencing a person adjudged guilty of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution."
South Dakota § 23A-28C-1	Victim has a right to restitution on request, "whether the convicted criminal is probated or incarcerated, unless the court or parole board provides to the victim on the record specific reasons for choosing not to require it."
West Virginia § 61-11A-4	"The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense, unless the court finds restitution to be wholly or partially impracticable as set forth in this article." The court shall state on the record its reasons for failing to order restitution.

RESTITUTION "MANDATORY," WITH VERY BROAD EXCEPTIONS

STATE/STATUTE	DETAILS OF PROVISION
Connecticut § 53a-28	Court shall order restitution "if it determines that financial restitution is appropriate." The statute lists some factors the court shall consider in making that determination, but includes "other circumstances that the court determines makes [sic] restitution appropriate or inappropriate."
*Montana	Statute (46-18-201) internally conflicting. In addition to other penalties, "if the court finds that the victim has sustained a pecuniary loss, the court shall require payment of restitution to the victim ...if the court determines that the defendant is unable to pay restitution, then ... may impose ... community service."

§ 46-18-201	"A sentencing court shall require an offender to make restitution to any victim of the offense who has sustained pecuniary loss as a result of the offense" but statute also provides "if the court finds that, because of circumstances beyond the offender's control, the offender is not and will not be able to pay any restitution during the period of state supervision, the court may order the offender to perform community service commensurate with the amount of restitution that would have been imposed."
§ 46-18-241	
Nevada § 176.033	"If a sentence of imprisonment is required or permitted by statute, the court shall ... if restitution is appropriate, set an amount of restitution for each victim." Mandatory if appropriate or if practicable.
New Jersey § 2C:44-2	"The court shall sentence a defendant to pay restitution in addition to a sentence of imprisonment or probation that may be imposed" if the victim suffered a loss and "the defendant is able to pay or, given a fair opportunity, will be able to pay restitution."
Oklahoma tit. 22 § 991a-10	"The court shall at the time of sentencing ... provide restitution to the victim ... if the defendant agrees to pay such restitution or, in the opinion of the court, he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family."
Wyoming § 7-9-103	"The court shall require restitution by a defendant if it determines [or] finds that the defendant has or will have an ability to pay or that a reasonable probability exists that the defendant will have an ability to pay."

**RESTITUTION NOT MANDATORY, BUT COURT MUST PROVIDE REASONS ON RECORD
FOR FAILURE TO ORDER RESTITUTION**

STATE/STATUTE	DETAILS OF PROVISION
Maryland Art. 27 § 640	On conviction, the court may order restitution. "A victim is presumed to have a right to restitution ... if" the victim or the state requests restitution, the court is presented with evidence of the victim's loss, and the defendant has the ability to pay. A court need not order restitution if it finds good cause to establish extenuating circumstances as to why an order of restitution is inappropriate. If restitution was requested and the court fails to order it, it must state its reasons on the record.
Mississippi § 99-37-3	The court may order restitution in addition to any other sentence. "If the court determines that restitution is inappropriate or undesirable, an order reciting such finding shall be entered, which should also state the underlying circumstances for such determination."
Utah § 76-3-201	"When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, that court shall order that the defendant make restitution to victims of crime as provided in this subsection, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement." Statute goes on to list factors the court is to consider in determining whether restitution is "appropriate." "If the court determines that restitution is appropriate or inappropriate under this subsection, the court shall make the reasons for the decision a part of the court record." The statute also provides that "the court may decline to make an order or may defer entering an order of restitution if the court determines that the complication and prolongation of the sentencing process, as a result of considering an order of restitution

under this subsection, substantially outweighs the need to provide restitution to the victim."

Vermont

tit. 13 § 7043

"Restitution shall be considered in every case in which a victim of a crime has suffered a material loss or has incurred medical expenses." "When restitution is not ordered, the court shall set forth on the record its reasons for not ordering restitution."

ORDER OF RESTITUTION IS IN COURT'S DISCRETION

STATE/STATUTE

DETAILS OF PROVISION

Arkansas

The trial court may sentence a person convicted of an offense other than capital murder or treason to make restitution.

§ 5-4-104

In addition, the sentencing authority shall make a determination of actual economic loss caused by the crime - the amount may be decided by agreement between a defendant and the victim represented by the prosecutor. The court shall enter a judgment against the defendant for this amount.

§ 5-4-205

Colorado

§ 24-4.1-302.5

Victims of crime have "the right to have the court determine the amount, if any, of restitution to be paid to a victim by any person convicted of a crime against such victim."

District of Columbia

§16-711

In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.

Georgia

§ 17-14-3

Authorizes the judge of any court of competent jurisdiction, the State board of pardons and paroles, and the department of corrections to order an adult offender to make restitution as a condition of any relief ordered.

Hawaii

§ 706-605

Court may sentence a convicted defendant to one or more listed dispositions, including "to make restitution in an amount the defendant can afford to pay."

Illinois

Const. Art. I, Sec. 8.1

703 ILCS § 5/5-5-6

Victims have a constitutional right to restitution "as provided by law." Statute makes restitution mandatory only for violent crimes against the elderly; for all other victims, the court is to determine whether restitution is appropriate.

Indiana

§ 35-50-5-3

In sentencing a person for a felony or misdemeanor, the court may order the person to make restitution to the victim.

Kansas

§ 8-1019

Sentence for drug or alcohol-related vehicular offense resulting in personal injury, death, or property damage may include restitution as a condition of probation or parole.

Kentucky	Kentucky appears to have no statute authorizing the ordering of restitution in criminal cases except as a condition of probation or conditional discharge (§533.030), home incarceration (§532.220), community corrections (§197.700 et seq.), or for damage or loss of property (§431.200).
Louisiana	<p>Louisiana appears to have no statute authorizing the ordering of restitution except as a condition of probation or parole.</p> <p>Condition of parole, mandatory for property loss/damage, discretionary for other loss. (15 R.S. 574.4)</p> <p>Restitution to victim or compensation program mandatory as condition of probation - appears to be mandatory requirement of parole as well. "If the defendant is found guilty and placed on probation, the court or parole board shall, as a condition of probation or parole, require the defendant to pay restitution ..." (46 R.S. 1844(M))</p>
Massachusetts ch. 258B § 3	Victims have the right "to request that restitution be an element of the final disposition of a case and to obtain assistance from the prosecutor in the documentation of the victim's losses."
Nebraska § 29-2280	"A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted." Also, with defendant's agreement, to victims of uncharged offense or dismissed offense pursuant to plea bargain.
New Hampshire § 21-M:8-k § 651:63	<p>Victims have the "right to restitution, as granted under RSA 651:62-67."</p> <p>"An offender may be sentenced to make restitution."</p>
North Carolina § 15A-1021 § 15B-24	<p>"Pursuant to a court's power to require restitution as a condition of probation, parole or work release privileges, a court may require a defendant to pay restitution to a victim."</p> <p>15A-1021, restitution may be part of a plea bargain.</p>
Ohio § 2929.11 § 2929.21	Penalties for felonies (except murder or aggravated murder) or misdemeanors may include restitution.
Oregon §137.106	"In addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim."
Rhode Island Const. Art. 1, Sec. 23 § 12-28-5	<p>Constitution states that victims are "entitled to receive, from the perpetrator of the crime, financial compensation for any injury or loss caused by the perpetrator of the crime." The statute provides that the court enters a judgment of civil liability at sentencing, and victim then brings an action for damages. § 12-19-32</p> <p>Also, the court has discretion to order restitution.</p>
Tennessee	

§ 39-11-118

§ 40-35-104

§ 40-35-304

"It is a part of the punishment for any offense committed in this state that the person committing such offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with the provisions of §§ 40-35-104(c)(2) and 40-35-304."

TABLE 11-B

RESTITUTION ORDERS: ENFORCEMENT AS CIVIL JUDGEMENT

Current through 1995

STATE/STATUTE	DETAILS	PRIOR DEFAULT REQUIRED
Alabama § 12-17-225.6	Restitution orders shall be considered civil judgments which can be recorded and enforced in the manner provided by law.	
Alabama § 15-8-144	Attachment of assets.	
Alabama § 15-18-78	Enforceable as civil judgment.	
Alabama § 15-18-143	Garnishment of wages, including for accumulated arrearage.	
Alabama Rule 26.11	Garnishment of wages.	
Alaska § 09.38.065	Restitution debt enforceable against exempt property.	
Alaska § 12.55.025	Enforceable as a lien.	
Alaska § 12.55.051	Enforceable as civil judgment.	
Arkansas	Enforceable as civil money judgment.	

§ 5-4-205		
Arizona	Writ of garnishment issued by	
§ 12-1571	clerk or magistrate.	
Arizona	Restitution order creates restitution lien in favor of victim.	
§ 13-804		
Arizona	Court retains jurisdiction over payments with judgments enforceable and renewable as civil judgment.	
§ 13-805		
Arizona	Enforceable as lien against real,	
§ 13-806	personal or other identified property.	
Arizona	Court may enter a garnishment order to	
§ 13-810	collect restitution.	X
Arizona	Court may issue writ of criminal garnishment for any restitution.	X
§ 13-812		
California	Court to enter income deduction order at time of restitution order (statute refers to restitution ordered pursuant to 2 former code sections, no longer in force on issue of restitution).	
Gvt. § 13967.2		
California	Restitution ordered as condition of probation still owing at end of probationary period enforceable as civil judgment.	X
PC § 1203		
California	Restitution ordered (if defendant received certain due process rights) is civil judgment enforceable as any money judgment; victim given certified copy of order on request.	
PC § 1214		
Colorado	Enforceable as civil judgment; non-dischargeable in bankruptcy.	
§ 16-11-101.5		
Colorado	Garnishment of percentage of prisoner's work release wages.	
§ 17-24-119		
Colorado	Enforcement of certain restitution orders as civil judgment.	
§ 18-6.5-106		
Delaware	Transfer of order to civil docket.	X
tit. 11 § 4101		
Delaware		

tit. 11 § 4104	Assignment of certain periodic sum; i.e., up to 1/3 of total earnings.	
Florida § 775.089	Enforceable as civil judgment.	
	Income deduction order.	
Georgia § 17-14-13	Enforceable by execution as a civil judgment.	
Georgia § 42-8-34.2	Arrearage of restitution ordered as condition of probation collectable as civil judgment.	X
Hawaii § 353-22	Garnishment, levy or attachment.	
Hawaii § 706-644	Execution may be levied for past due amounts.	X
Idaho § 19-5305	45 days after entry of order, recorded as civil judgment and collectable as civil judgment.	
Illinois ch. 730 § 5/5-5-6	Attachment and sale of property.	
	Order is a civil lien.	
Illinois ch. 735 § 5/4-101	Attachment against property of certain serious offenders.	
Indiana § 35-50-5-3	Same effect as a civil judgment.	
Iowa § 910.4	Court shall enter civil judgment for restitution owing on expiration of probation.	
Iowa § 910.5	Court shall enter civil judgment for restitution owing on expiration of sentence or parole.	

Iowa § 910.7A	Enforceable as civil judgment, attaches to property, enforceable and expires as liens from civil judgment.	
Kansas §§ 60-4301 et seq.	Restitution judgment is to be recorded in same manner as civil judgment; enforceable as civil judgment.	
Kentucky § 431.200	Petition for enforcement by execution or other process (this relates only to property offenses).	
Louisiana CCrP Art. 895.1	An order to pay restitution as a condition of probation is a civil judgment in favor of the person to whom restitution is owed, if the defendant received certain due process rights. The judgment may be enforced in the same manner as a civil judgment.	
Maryland Art. 27 § 637	Court-ordered execution against property or income deduction from work release earnings.	
Maryland Art. 27 § 640	Recordation in civil judgment index for enforcement as a civil money judgment - automatic for restitution ordered in circuit court, victim must instigation for orders issued in district court.	
Maryland CJP § 3-829	Enforceable as a monetary judgment.	
Michigan § 3.372 § 28.1073(16) § 28.1287(766) § 28.1287(826)	Enforceable as a civil judgment by the victim or prosecutor.	
Minnesota § 609.532	Freezing of bank accounts.	
Minnesota § 611A.04	Enforceable as civil judgment.	
Mississippi § 99-37-13	collection by any means provided	X
Missouri		

Const. Art. I, Sec. 32	Enforceable as civil judgment.	
Missouri § 546.630	Enforceable by collection or other legal means at court's discretion.	
Missouri § 595.209	Enforceable as civil judgment.	
Montana § 46-18-244	Court may order forfeiture and sale of offender's assets.	
Montana § 46-18-247	Order to pay restitution constitutes judgment in favor of state; on default, court may order restitution to be collected by any method authorized for enforcement of other judgments.	X
Nebraska § 29-2286	Enforceable as civil judgment.	
Nevada § 176.225 § 176.245	Unpaid restitution at end of probation period becomes civil liability.	
Nevada § 213.126	Discretionary assignment of wages by board of pardons and paroles.	
New Jersey § 2C:46-1	Restitution order entered as a civil judgment.	
New Jersey § 2C:46-2	Upon default, enforceable as a civil judgment, including through levying of execution.	X
New York § CPL 420.10	Collection as civil judgment.	
North Dakota § 12.1-32-08	Enforceable as civil judgment.	
Oklahoma tit. 22 § 991a-10	Seizure and sale of real or personal property.	
Oregon		

§ 161.685	On default, collection as civil judgment.	X
Rhode Island § 12-19-34	State may bring civil action to place lien on personal or real property or garnish wages of defendant ordered to pay restitution.	
Rhode Island § 12-28-5.1	Civil judgment automatically entered for amount of restitution; on default, enforceable as civil judgment, including costs, interest and fees.	
South Carolina § 16-3-1270	Enforceable as a lien against real and personal property.	
South Carolina § 17-25-323	On default in payment on probation or parole, court may enter judgment, enforceable as a civil judgment.	X
South Dakota § 23A-27-25.1 South Dakota § 23A-27-25.6 § 23A-28-1	Assignment of wages. Enforceable as civil judgment.	
Texas CCP art. 42.21 CCP art. 42.037	The victim has a restitution lien to secure the amount of restitution, which extends to real, or tangible or intangible personal property including motor vehicles; victim may foreclose on lien after defendant fails to timely make a payment under a restitution schedule. Order of restitution may be enforced by victim or state as a civil judgment.	
Utah § 76-3-201	Complete restitution order entered the civil judgment docket; constitutes a lien; order enforceable under the rules of civil procedure by the victim. If the defendant fails to obey court order for payment or restitution and victim pursues collection by civil process, victim entitled to recover reasonable attorneys fees. Interest accrues on amount ordered from time of sentencing.	
Utah § 76-3-201.1	Upon default, collection by any legal means.	X
Utah § 77-18-1	Enforceable as civil judgment.	
Utah		

§ 77-18-6	Acts as a lien enforceable as a civil judgment.	
Utah § 77-27-6	Restitution owing upon termination of parole or expiration of sentence entered on judgment docket, enforceable as civil lien.	
Vermont tit. 13 § 7043	Enforced in the manner of civil judgments.	
Virginia § 19.2-305.2	Restitution order enforceable as civil judgment.	
Virginia § 19.2-349	The prosecuting attorney shall bring proceedings for collection and satisfaction of restitution, or may contract with private attorneys or entities for collection.	
Washington § 9.94A.142	Restitution may be enforced in the same manner as a civil judgment by the victim or the state.	
Washington § 9.94A.145	Restitution order for felony offense enforceable as civil judgment for 10 year period after sentence or after release from total confinement, whichever is longer; upon non-payment for more than 30 days, assignment of wages by victim or department.	
Washington § 9.94A.2001	Upon non-payment for more than 30 days, assignment of wages by victim or department.	X
Washington § 9.94A.200010	Upon non-payment for more than 30 days, issuance of payroll deduction by department.	
Washington § 9.94A.200030	Discretionary issuance of order to attach property by department.	
Washington § 9.94A.200040	Freezing of bank accounts.	
West Virginia § 61-11A-4	An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.	
Wisconsin § 973.09	Enforceable as civil judgment on expiration of probation.	
Wisconsin § 973.20	Enforcement as civil judgment upon termination of probation or parole, or if no probation or parole ordered.	

Wyoming § 7-9-103	Issuance of execution against assets, including wages.	
Wyoming § 7-9-114	Enforceable as a civil judgment.	

END NOTES

1. President's Task Force on Victims of Crime, *Final Report*, Dec. 1982, p. 18, 34, 72, 78-80.
2. *Id.*, p. 79.
3. See Smith, Barbara E., Robert C. Davis and Susan W. Hillenbrand, *Improving Enforcement of Court-Ordered Restitution: Executive Summary*. American Bar Association 1989, p. 5.
4. For example, in Michigan, domestic violence shelters and other victim service organizations are eligible for restitution. The law provides for the ordering of restitution "for the costs of services provided, to persons or entities that have provided services to the victim as a result of the crime. Services that are subject to restitution ... include, but are not limited to, shelter, food, clothing, and transportation." Mich. Stat. Ann. §§ 28.1287(766) and 28.1287(826). See also Alaska Stat. § 12.55.045.
5. California AB 3169 [Stats. 1994, c. 1106].
6. As examples, see Minnesota and Utah, as reflected in Table 11-A.
7. Ark. Stat. Ann. § 5-4-205.
8. Minn. Stat. Ann. § 611.04.
9. R.I. Gen. Laws § 12-28-5. In addition, the court has discretion to order restitution. R.I. Gen. Laws § 12-19-32.
10. Idaho Code § 19-5304.
11. Mont. Code Ann. § 46-18-242.
12. See, for example, Mich. Stat. Ann. § 28.1287(766); Minn. Stat. Ann. § 611A.045; Mont. Code Ann. § 46-18-242.
13. Md. Code Ann. CJP § 12-303.1.
14. Md. Code Ann. CJP § 12-303.1.
15. N.J. Stat. Ann. § 2C:44-6.
16. Minn. Stat. Ann. § 611.04[1b]

17. Wash. Rev. Code Ann. § 9.94A.145.
18. Mass. Gen. Laws Ann. ch. 258B, § 3(o).
19. Minn. Stat. Ann. § 611A.04[2].
20. N.J. Stat. Ann. §§ 2C:46-1, 1.1
21. N.Y. Crim. Proc. Law § 420.10.
22. Mich. Stat. Ann.. §§ 28.1287(766), 28.1287(826).
23. Ariz. Rev. Stat. Ann. § 12-116.
24. Wis. Stat. Ann. § 973.20(11).
25. Ala. Code §§ 12-17-225 et seq.
26. KS Chapter 195, Sec. 1 (1996).
27. As examples, see Ariz. Rev. Stat. Ann. § 31-254; Mont. Code Ann. § 46-18-244.
28. Ariz. Rev. Stat. Ann. § 13-804(J); Kan. Stat. ann. §§ 75-6201 et seq.
29. N.M. Stat. Ann. § 41-4-16.1.
30. Iowa Code §§ 910.4, 910.5.
31. Mass. Gen. Laws Ann. ch. 276, §§ 31, 32.
32. Or. Rev. Stat. § 161.685.
33. Fla. Stat. Ann. § 775.089.
34. Ala. Code § 15-18-143.
35. Colo. Rev. Stat. §§ 16-7-304, 16-7-404 and 16-11-204.5.
36. Del. Code Ann. tit. 11, § 4104.
37. Neb. Rev. Stat. § 28.90.30.
38. R.I. Gen. Laws § 12-19-34.
1. President's Task Force on Victims of Crime, *Final Report*, Dec. 1982, p. 18, 34, 72, 78-80.
2. *Id.*, p. 79.
3. See Smith, Barbara E., Robert C. Davis and Susan W. Hillenbrand, *Improving Enforcement of Court-Ordered Restitution: Executive Summary*. American Bar Association 1989, p. 5.
4. For example, in Michigan, domestic violence shelters and other victim service organizations are eligible for

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5. California AB 3169 [Stats. 1994, c. 1106].

6. As examples, see Minnesota and Utah, as reflected in Table 11-A.

7. Ark. Stat. Ann. § 5-4-205.

8. Minn. Stat. Ann. § 611.04.

9. R.I. Gen. Laws § 12-28-5. In addition, the court has discretion to order restitution. R.I. Gen. Laws § 12-19-32.

10. Idaho Code § 19-5304.

11. Mont. Code Ann. § 46-18-242.

12. See, for example, Mich. Stat. Ann. § 28.1287(766); Minn. Stat. Ann. § 611A.045; Mont. Code Ann. § 46-18-242.

13. This provision appears to be restricted to cases where the defendant could be sentenced to probation. Cal. Penal Code § 1203.

14. Md. Code Ann. CJP § 12-303.1.

15. N.J. Stat. Ann. § 2C:44-6.

16. Minn. Stat. Ann. § 611.04[1b]

17. Wash. Rev. Code Ann.

§ 9.94A.145.

18. Mass. Gen. Laws Ann. ch. 258B,

§ 3(o).

19. Minn. Stat. Ann. § 611A.04[2].

20. N.J. Stat. Ann. §§ 2C:46-1, 1.1

21. N.Y. Crim. Proc. Law § 420.10.

22. Mich. Stat. Ann., §§ 28.1287(766), 28.1287(826).

23. Ariz. Rev. Stat. Ann. § 12-116.

24. Wis. Stat. Ann. § 973.20(11).

25. Ala. Code §§ 12-17-225 et seq.

26. KS Chapter 195, Sec. 1 (1996).

27. As examples, see Ariz. Rev. Stat. Ann. § 31-254; Mont. Code Ann. § 46-18-244.

28. Ariz. Rev. Stat. Ann. § 13-804(J); Kan. Stat. ann. §§ 75-6201 et seq.

29. N.M. Stat. Ann. § 41-4-16.1.

30. Iowa Code §§ 910.4, 910.5.

31. Mass. Gen. Laws Ann. ch. 276,

§§ 31, 32.

32. Or. Rev. Stat. § 161.685.

33. Fla. Stat. Ann. § 775.089.

34. Ala. Code § 15-18-143.

35. Colo. Rev. Stat. §§ 16-7-304, 16-7-404 and 16-11-204.5.

36. Del. Code Ann. tit. 11, § 4104.

37. Neb. Rev. Stat. § 28.90.30.

38. R.I. Gen. Laws § 12-19-34.

§ 11-603. Restitution determination.

(a) *Conditions for judgment of restitution.* — A court may enter a judgment of restitution that orders a defendant or child respondent to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if:

(1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;

(2) as a direct result of the crime or delinquent act, the victim suffered:

(i) actual medical, dental, hospital, counseling, funeral, or burial expenses;

(ii) any other direct out-of-pocket loss; or

(iii) loss of earnings;

(3) the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;

(4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;

(5) the Criminal Injuries Compensation Board paid benefits to a victim; or

(6) the Department of Health and Mental Hygiene or other governmental unit paid expenses incurred under Subtitle 2, Part II of this title.

(b) *Right of victims to restitution.* — A victim is presumed to have a right to restitution under subsection (a) of this section if:

(1) the victim or the State requests restitution; and

(2) the court is presented with competent evidence of any item listed in subsection (a) of this section.

(c) *Effect of judgment of restitution.* — (1) A judgment of restitution does not preclude the property owner or the victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor.

(2) A civil verdict shall be reduced by the amount paid under the criminal judgment of restitution.

(d) *Acts of graffiti.* — In making a disposition on a finding that a child at least 13 years old has committed an act of graffiti under Article 27, § 111(f) of the Code, the court shall order the child to perform community service or pay restitution or both. (An. Code 1957, art. 27, §§ 805A(b), 807(a)(1), (2), (e), 813; 2001, ch. 10, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, §§ 813, 805A(b), and 807(a) and (e).

In subsection (a)(3), (4), and (6) of this section, the reference to a governmental "unit" is substituted for the former reference to a governmental "entity" to conform to the terminology used in other revised articles of the Code.

Throughout this section, the defined term "delinquent act" and the defined term "child respondent" are added for clarity. See General Revisor's Note to this title.

Defined terms:

"Child"	§ 11-601
"Child respondent"	§ 11-101
"Crime"	§ 11-601
"Defendant"	§ 11-601
"Delinquent act"	§ 11-101
"Judgment of restitution"	§ 11-601
"Restitution obligor"	§ 11-601
"Victim"	§ 11-601

Maryland Law Review. — For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 513 (1985).

University of Baltimore Law Review. — For comment, "Rights of the Maryland Probationer: A Primer for the Practitioner," see 11 U. Balt. L. Rev. 272 (1982).

Purpose of restitution. — The objectives of restitution do not include that the victim must be made whole by the full reimbursement of the victim's loss, but they do not preclude that possibility if the defendant has the ability to pay. *Anne Arundel County v. Hartford Accident & Indem. Co.*, 329 Md. 677, 621 A.2d 427 (1993).

Restitution should promote rehabilitation. — Should the court choose to impose restitution, the fundamental objective of promoting rehabilitation comes to the fore and the court in ordering such a condition ordinarily should not exceed the defendant's ability to comply. *Coles v. State*, 290 Md. 296, 429 A.2d 1029 (1981).

If the amount fixed as restitution exceeds the defendant's resources, the rehabilitative purpose of the sentence is frustrated, especially where restitution is set as a condition of proba-

tion, for in such a case the defendant is told that he will not be imprisoned only if he somehow satisfies a condition he cannot hope to satisfy. *Coles v. State*, 290 Md. 296, 429 A.2d 1029 (1981).

Restitution as condition of probation or sentence. — A trial judge may order restitution either as a condition of probation or as a part of a sentence; however, there is a significant distinction between the two methods. One distinction relates to the method of enforcement. The more significant distinction, however, relates to the inability of the court to increase or enhance a sentence that has once and validly been imposed. *Jackson v. State*, 68 Md. App. 679, 515 A.2d 768 (1986).

Order of restitution. — An order of restitution may be either a separate document containing such an order exclusively, or a direction to pay restitution contained in, and being part of, an order of probation. *Songer v. State*, 88 Md. App. 221, 594 A.2d 621 (1991), rev'd on other grounds, 327 Md. 42, 607 A.2d 557 (1992).

Payment not authorized without conviction for crime. — Trial court exceeded its statutory authorization in sentencing defendant to pay restitution to the victim of a crime

of which he was not convicted. *Walczak v. State*, 302 Md. 422, 488 A.2d 949 (1985).

If restitution not part of original sentence Board of Parole cannot make it condition of parole. — If, at the time of parole, the Board of Parole wishes to require that the parolee comply with an order of restitution issued at the time of sentencing, it may do so, but if the court did not make restitution a part of the original sentence, it cannot be made a condition of parole. *Mitchell v. State*, 58 Md. App. 113, 472 A.2d 494 (1984).

Restitution is penal in nature since liability arises as a consequence of a presumed neglect of parental responsibilities, and it also can

compensate victims who have been injured or who have suffered property loss as a result of the wrongful acts of a minor and impress upon that juvenile the gravity of harm he has inflicted upon another and provide an opportunity for him to make amends. In re John M., 129 Md. App. 165, 741 A.2d 503 (1999).

Restitution amount greater than maximum in crime for which convicted. — A defendant in a criminal case may, as part of a plea agreement, lawfully be ordered to pay restitution in an amount greater than that involved in the crime of which he was convicted. *Lee v. State*, 307 Md. 74, 512 A.2d 372 (1986).

§ 11-604. Payers of restitution.

(a) *Restitution allowed against child, parent, or both.* — Notwithstanding any other law, if a child is the defendant or child respondent, the court may order the child, the child's parent, or both to pay restitution to a victim.

(b) *\$10,000 limit.* — A judgment of restitution for \$10,000 issued under Part I of this subtitle is the absolute limit for all acts arising out of a single incident and is the absolute limit against one child, the child's parent, or both.

(c) *Rights of parents.* — (1) A court may not enter a judgment of restitution against a parent under Part I of this subtitle unless the parent has been afforded a reasonable opportunity to be heard and to present evidence.

(2) A hearing under this subsection may be held as part of the sentencing or disposition hearing. (An. Code 1957, art. 27, § 807(a)(3); 2001, ch. 10, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, § 807(a)(3).

In subsection (a) of this section, the defined term "child respondent" is added. See General Revisor's Note to this title.

In subsections (b) and (c)(1) of this section, the references to "Part I of this subtitle" are substituted for the former references to this "section" to reflect the reorganization of former Art. 27, § 807, in the revision of Part I of this subtitle.

In subsection (b) of this section, the former phrase "may not exceed" is deleted in light of the reference to an "absolute limit".

In subsection (c)(1) of this section, the former references to "appropriate" evidence and to evidence "on the parent's behalf" are deleted as surplusage.

In subsection (c)(2) of this section, the reference to this "subsection" is substituted for the former overly broad reference to this "section" for clarity.

Defined terms:

"Child"	§ 11-601
"Child respondent"	§ 11-101
"Defendant"	§ 11-601
"Judgment of restitution"	§ 11-601
"Victim"	§ 11-601

Separate episodes. — Each babysitting visit constituted a separate episode in a series of related events for purposes of establishing the maximum liability for restitution, not each act committed during those visits. In re John M., 129 Md. App. 165, 741 A.2d 503 (1999).

Future expenses. — Because the juvenile

court only has the ability to award restitution for reasonable sums that have already been incurred that are causally related to the juvenile's delinquent acts, an award for future counseling expenses was not appropriate. In re John M., 129 Md. App. 165, 741 A.2d 503 (1999).

Restitution where victim or third party payor not named in delinquency petition.

— It was within the juvenile court's power to enter a judgment against a juvenile found to have committed a delinquent act to make restitution to a victim or a third party payor for losses caused by his delinquent act, although the victim or payor was not named in the delinquency petition. *In re Tyrek S.*, 118 Md. App. 270, 702 A.2d 466 (1997), *aff'd*, 351 Md. 698, 720 A.2d 306 (1998).

Parental liability. — It was error for a master to order the parent of a juvenile of-

fender to pay all of the costs of damage to a stolen car, where some of the damage was found not to have been caused by the juvenile. *In re Levon A.*, 124 Md. App. 103, 720 A.2d 1232 (1998).

Parent not required to pay restitution on behalf of juvenile offender where doing so would require the parent to sacrifice the well being of her other children. *In re Levon A.*, 124 Md. App. 103, 720 A.2d 1232 (1998).

§ 11-605. When restitution need not be ordered.

(a) *In general.* — A court need not issue a judgment of restitution under Part I of this subtitle if the court finds:

(1) that the restitution obligor does not have the ability to pay the judgment of restitution; or

(2) that there are extenuating circumstances that make a judgment of restitution inappropriate.

(b) *Refusal of restitution.* — A court that refuses to order restitution that is requested under Part I of this subtitle shall state on the record the reasons. (An. Code 1957, art. 27, § 807(a)(4), (8); 2001, ch. 10, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, § 807(a)(4) and (8).

In subsection (a)(2) of this section, the former reference to a judgment of restitution that is inappropriate "in a case" is deleted as implicit in the reference to a "judgment".

Also in subsection (a)(2) of this section, the

former reference to "[g]ood cause to establish" extenuating circumstances is deleted as implicit in the reference to a court finding "that there are" extenuating circumstances.

Defined terms:

"Judgment of restitution" § 11-601

"Restitution obligor" § 11-601

Order for restitution at judge's discretion. — An order for restitution is at the discretion of the judge and, if ordered, the amount of restitution is dependent on the ability of the defendant to pay. *Anne Arundel County v. Hartford Accident & Indem. Co.*, 329 Md. 677, 621 A.2d 427 (1993).

Reasoned inquiry into defendant's ability to pay restitution required. — It is improper for a trial court to order restitution without basing that judgment on a reasoned

inquiry into the defendant's ability to pay. *Coles v. State*, 290 Md. 296, 429 A.2d 1029 (1981).

But failure to make inquiry does not render sentence illegal. — The trial court's failure to make an inquiry into the defendant's ability to make restitution, even if such inquiry is mandatory, does not render the sentence illegal within the meaning of former Md. Rule 774 (now Rule 4-345) of the Maryland Rules of Procedure. *Coles v. State*, 290 Md. 296, 429 A.2d 1029 (1981).

§ 11-606. Payment of restitution.

(a) *Restitution recipients.* — The court may order that restitution be paid to:

(1) the victim;

(2) the Department of Health and Mental Hygiene, the Criminal Injuries Compensation Board, or any other governmental unit; or

(3) a third-party payor, including an insurer, or any other person that has compensated the victim for a property or pecuniary loss under Part I of this subtitle.

(b) *Priority of restitution payments.* — (1) Payment of restitution to the victim has priority over:

(i) payment of restitution to the Department of Health and Mental Hygiene or other governmental unit; and

(ii) subject to paragraph (2) of this subsection, payment of restitution to a third-party payor.

(2) If the victim has been fully compensated for the victim's loss by a third-party payor, the court may issue a judgment of restitution that directs the restitution obligor to pay restitution to the third-party payor. (An. Code 1957, art. 27, § 807(a)(5), (6), (7); 2001, ch. 10, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, § 807(a)(5) through (7).

In subsections (a)(2) and (b)(1)(i) of this section, the references to a governmental "unit" are substituted for the former references to a governmental "entity". See General Revisor's Note to article.

In subsection (a)(3) of this section, the reference to "Part I of this subtitle" is substituted for the former reference to this "subsection" to reflect the reorganization of former Art. 27, § 807 in the revision of Part I of this subtitle.

In subsection (a)(3) of this section, the former reference to a payor "which has made payment to the victim" is deleted in light of the phrase "compensated the victim".

In subsection (b)(1) of this section, the former reference to restitution to the victim "under this subsection" is deleted as surplusage.

Defined terms:

"Judgment of restitution"	§ 11-601
"Person"	§ 1-101
"Restitution obligor"	§ 11-601
"Victim"	§ 11-601

Provision for restitution to third-party payors created new substantive right which may not be applied retroactively. — The 1982 amendment to former Art. 27, § 807, providing for restitution payment to third-party payors, created a right in them which did not exist under the previous statute and, therefore, was an amendment of substance and not procedure and may not be applied retroactively. *Spielman v. State*, 298 Md. 602, 471 A.2d 730 (1984).

One who has been ordered to pay restitution, as a condition of probation, and is subject to revocation of that probation for failure to make payment, has received punishment and it necessarily follows that the amendment providing for restitution to third-party payors may not be applied retrospectively since it makes the punishment for the crime more burdensome than it was when the crime was committed. *Spielman v. State*, 298 Md. 602, 471 A.2d 730 (1984).

Relinquishment of right to restitution. — Where a county had the right under former Art. 27, § 807 to a \$25,000 deductible amount which was not paid by the insurer, but the county voluntarily and freely relinquished that

right, since the county is a sophisticated government agency which dealt at arm's length with the insurer in negotiating and relinquishing its right to the restitution, public policy could not overturn the relinquishment agreement. *Anne Arundel County v. Hartford Accident & Indem. Co.*, 329 Md. 677, 621 A.2d 427 (1993).

Court exceeded sentencing authority. — An open-ended order to make additional restitution to a wide variety of "victims" to be determined by the Probation Department and in amounts to be determined by the Probation Department exceeded the sentencing authority of the court. *Mason v. State*, 46 Md. App. 1, 415 A.2d 315 (1980).

The direction of the trial court that the Division of Parole and Probation determine the amount of restitution is an illegal delegation of the statutory authority of the court as set forth in former Art. 27, § 807 and former Art. 27, § 641A (now § 6-222 of this article) and a violation of the due process rights of the defendant. *Richards v. State*, 65 Md. App. 141, 499 A.2d 965 (1985).

**Title VIII: Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability
Amendment Act of 2003**

Exhibit F

Missouri Juvenile Restitution Statutes

MISSOURI ANNOTATED STATUTES
TITLE 12. PUBLIC HEALTH AND WELFARE
CHAPTER 211. JUVENILE COURTS

§ 211.185. Court may order parents and child to make restitution, when, amount -- restitution hearing required, when, procedure -- community service -- execution of judgment

1. In addition to the court's authority to issue an order for the child to make restitution or reparation for the damage or loss caused by his offense as provided in *section 211.181*, the court may enter a judgment of restitution against both the parent and the child pursuant to the provisions of this section if the court finds that the parent has failed to exercise reasonable parental discipline or authority to prevent the damage or loss and the child has:

(1) Stolen, damaged, destroyed, converted, unlawfully obtained, or substantially decreased the value of the property of another; or

(2) Inflicted personal injury on another, requiring the injured person to incur medical, dental, hospital, funeral, or burial expenses.

2. The court may order both the parent and the child to make restitution to:

(1) The victim;

(2) Any governmental entity; or

(3) A third-party payor, including an insurer, that has made payment to the victim to compensate the victim for a property loss or a pecuniary loss under subdivisions (1) and (2) of subsection 1 of this section.

3. Restitution payments to the victim have priority over restitution payments to a third-party payor. If the victim has been compensated for the victim's loss by a third-party payor, the court may order restitution payments to the third-party payor in the amount that the third-party payor compensated the victim.

4. Payment of restitution to a victim under this section has priority over payment of restitution to any governmental entity.

5. Considering the age and circumstances of a child, the court may order the child to make restitution to the wronged person personally.

6. A restitution hearing to determine the liability of the parent and the child shall be held not later than thirty days after the disposition hearing and may be extended by the court for good cause. In the restitution hearing, a written statement or bill for medical, dental, hospital, funeral, or burial expenses shall be prima facie evidence that the amount indicated on the written statement or bill represents a fair and reasonable charge for the services or materials provided. The burden of proving that the amount indicated on the written statement or bill is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

7. A judgment of restitution against a parent may not be entered unless the parent has been afforded a reasonable opportunity to be heard and to present appropriate evidence in his behalf. The parent shall be advised of his right to obtain counsel for representation at the hearing. A hearing under this section may be held as part of an adjudicatory or disposition hearing for the child.

8. The judgment may be enforced in the same manner as enforcing monetary judgments.

9. A judgment of restitution ordered pursuant to this section against a child and his parents shall not be a bar to a proceeding against the child and his parents pursuant to *section 537.045, RSMo*, or *section 8.150, RSMo*, for the balance of the damages not paid pursuant to this section. In no event, however, may the total restitution paid by the child and his parents pursuant to this section, *section 8.150, RSMo*, and *section 537.045, RSMo*, exceed four thousand dollars.

10. The child may be ordered to work in a court-approved community service work site at a rate of compensation not to exceed minimum wage. The number of hours worked shall be reported to the juvenile officer and the compensation earned for these hours shall be used for the sole purpose of satisfying the judgment entered against the child in accordance with this section. Upon application by the juvenile officer made with the juvenile court's written approval, the clerk of the court of the circuit where the fund is deposited and where a judgment has been entered in accordance with this section shall pay the compensation earned by the child to the person in whose favor the judgment has been entered.

11. Notwithstanding any other provision of this section to the contrary, a judgment of restitution ordered pursuant to this section against a child may be executed upon after the child attains the age of eighteen years.

§ 211.188. Court may order work for restitution--not an employee

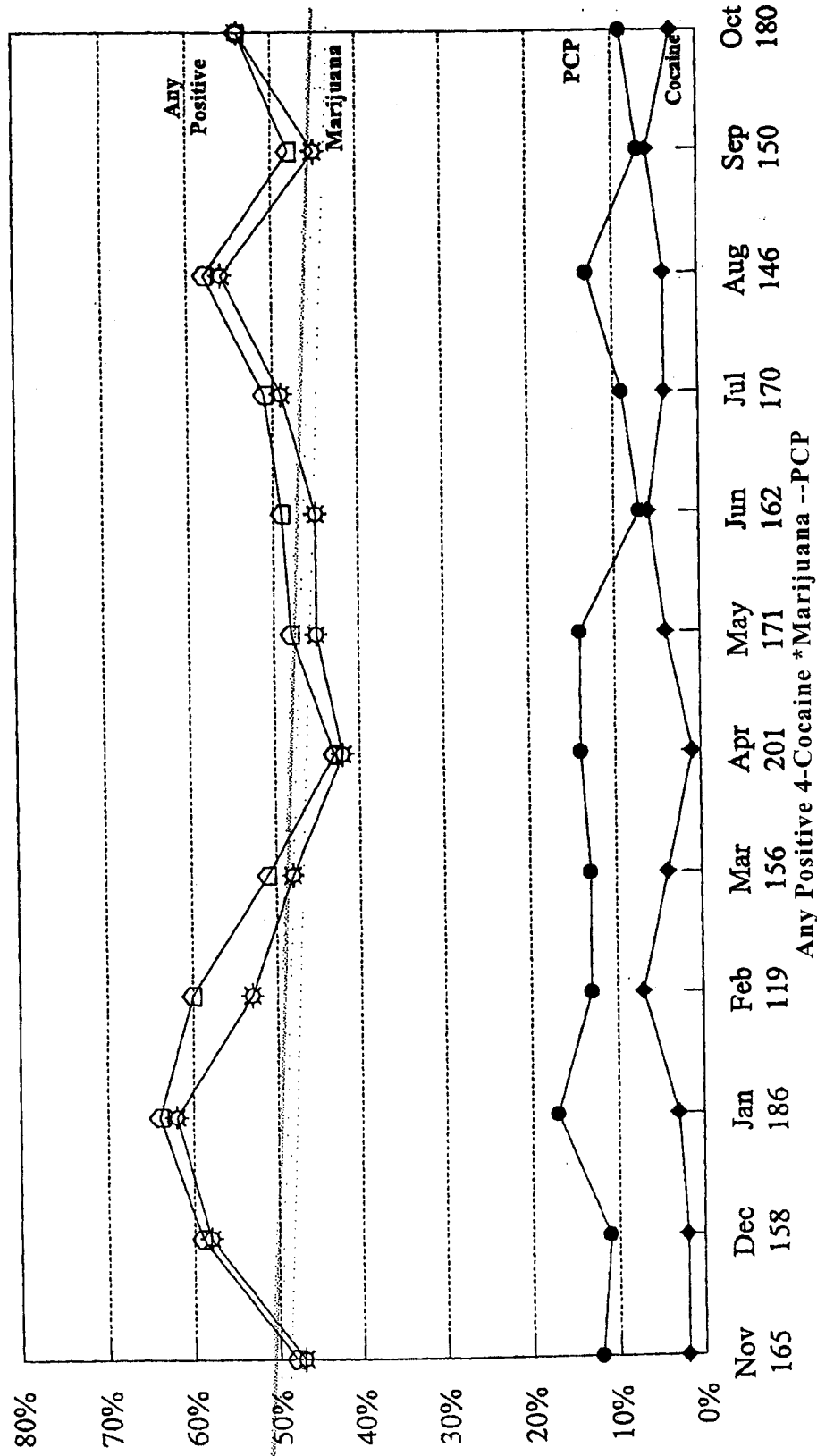
1. The court may order a child, who has been adjudicated for a nonviolent crime and who is age fourteen or older, to work for any employer at a rate of compensation not to exceed minimum wage, for a period of time necessary to make such restitution for the damage or loss caused by his offense.

2. A child, age fourteen or older, who is ordered by the juvenile court to make restitution for the damage or loss caused by his offense pursuant to subsection 1 of this section shall not be considered an employee as defined in *section 290.500, RSMo*.

Title XII: Parental Participation and Accountability Act of 2003 - Exhibit A

Drug Testing of Juvenile Respondents*

November 2002 – October 2003



This data reflects results of the drug test conducted prior to the juvenile's initial court hearing.